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July 24, 2006

State Water Resources Control Board 1001 I Street Sacramento, CA 95812

Attn: Elizabeth Miller Jennings

Re: Petition for Review of Adoption of Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands, adopted by the Regional Water Quality Control Board, Region 5 (Central Valley Region), on June 22, 2006.

Request for Hearing

Request to Hold Petition in Abeyance

Dear Friends:

Please accept this letter as a Petition for review by the Turlock Irrigation District, the Oakdale Irrigation District, the South San Joaquin Irrigation District, the Modesto Irrigation District, and the Merced Irrigation District of two orders approving Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands, adopted by the Central Valley Regional Water Quality Control Board, on or about June 22, 2006.

Petition for Review

1. The Petitioners in this matter are:

Turlock Irrigation District

Attn: Robert M. Nees; Debra C. Liebersbach 333 East Canal Drive Turlock, CA 95381 (209) 883-8300 dcliebersbach@tid.org

This Petitioner is represented by:

Peter W. McGaw Archer Norris 2033 North Main Street, Suite 800 Walnut Creek, California 94596 ph (925) 930-6600 fx (925) 930-6620 pmcgaw@archernorris.com

Oakdale Irrigation District

1205 East F Street Oakdale, CA 95361

South San Joaquin Irrigation District

11011 E. Highway 120 Manteca, CA 95336

Modesto Irrigation District

1231 11th Street Modesto, CA 95254

Merced Irrigation District

744 W. 20th Street Merced, CA 95340

These Petitioners are represented by:

Timothy O'Laughlin
O'Laughlin & Paris LLP
2571 California Park Drive, Suite 210
Chico, CA 95928
ph (530) 899-9755
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2. This is a Petition for review of two orders issued under Water Code Section 13267 and 13269, issued by the Regional Water Quality Control Board, Region 5 (Central Valley Region), on June 22, 2006. The two orders at issue, Order No. R5-2006-0053, Conditional Waiver of Waste Discharge Requirements for

Discharges from Irrigated Lands for Coalition Groups, and Order No. R5-2006-0054, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands for Individual Dischargers, are available at http://www.swrcb.ca.gov/rwqcb5/adopted_orders/Waivers/R5-2006-0053.pdf and http://www.swrcb.ca.gov/rwqcb5/adopted_orders/Waivers/R5-2006-0054.pdf, respectively. Due to their voluminous nature, copies of these Orders are not being included at this time but will be provided when this Petition is no longer held in abeyance. (See Request to Hold Petition in Abeyance, below). Collectively, these two Orders are referred to as the "Ag Waivers."

- 3. The action of the Regional Water Quality Control Board occurred on June 22, 2006.
- 4. The bases for this Petition are set forth in correspondence submitted on behalf of Petitioners to the Regional Water Quality Control Board, dated June 21, 2005 (Turlock ID), July 15, 2005 (South San Joaquin ID, Oakdale ID, Modesto ID, Turlock ID, Merced ID), August 17, 2005 (Turlock ID), August 23, 2005 (Archer Norris on behalf of Turlock ID), October 18, 2005 (Archer Norris on behalf of Turlock ID), November 4, 2005 (Turlock ID), November 21, 2005 (Turlock ID), January 9, 2006 (Merced ID, Modesto ID, Oakdale ID, South San Joaquin ID, Turlock ID), May 18, 2006 (South San Joaquin ID), May 18, 2006 (Modesto ID), May 19, 2006 (Merced ID), and May 19, 2006, (Turlock ID), as well as other written and oral comments that may have been made by these Petitioners or by others. A copy of each of the enumerated letters is attached hereto as a collective Attachment to Petition. The issues raised by this Petition were further explained and amplified in oral comments by and on behalf of Petitioners to the Regional Board, as reflected in the tapes and transcripts of workshops hearings that occurred on June 23, 2005, September 15, 2005, October 20, 2005, November 28, 2005, and June 22, 2006. As adopted, the Ag Waivers exceed the jurisdictional authority of the Regional Board, are contrary to law, and constitute an abuse of discretion. They impose responsibility on irrigation districts and other water conveyers for the discharges of waste to waters of the state by others. The responsibility for discharges of waste by others includes, but is not limited to, requirements for monitoring the discharges of waste to waters of the state by others and responsibility for implementing Best Management Practices necessary to achieve "water quality standards" in order to ameliorate discharges of waste to waters of the state by others. In addition, insofar as the Ag Waivers impose responsibility on irrigation districts and other water conveyers for the discharges of waste to waters of the state by others, adoption of the Ag Waivers reflect inappropriate public policy choices. These policy choices are subject to review and modification by the State Water Resources Control Board under Water Code section 13320(c).

- 5. Petitioners are aggrieved in that it is denied the opportunity to participate in an appropriate and lawful program of Conditional Waivers of Waste Discharge Requirements.
- 6. Petitioners ask the State Board to vacate or modify the two Orders as requested in the comment letters attached as Exhibit C, so that the Ag Waivers reflect the correct and appropriate assignment of responsibility for discharges of waste to waters of the state to those generating and discharging the waste, and not to conveyers of water that contains waste discharged by others.
- 7. In light of Petitioners' request that the State Board hold this Petition in abeyance (see below), Petitioner asks leave to submit a more comprehensive discussion of the legal and factual bases of this Petition once the Petition is no longer held in abeyance.
- 8. A copy of this Petition is being sent to the Regional Water Quality Control Board, Central Valley Region.
- 9. The substantive issues and objections raised by this Petition were raised before the Regional Board.
- 10. In light of Petitioner's request that this Petition be held in abeyance, Petitioners request the Regional Board be allowed to defer preparation of the administrative record at this time.

Petitioners may wish to submit additional evidence and may request a hearing to consider additional evidence. Petitioners will advise the State Board of its specific requests in this regard when it requests the State Board no longer hold this Petition in abeyance. Petitioners may also request at that time that the State Board issue a stay of certain provisions of the Orders.

Request to Hold Petition in Abeyance

Petitioners ask the State Board to hold this Petition in abeyance until such time as the Petitioners request the Petition proceed. At that time, or at such other time as the State Board may allow, Petitioners will submit a more detailed statement of points of authorities and additional evidence which was not considered by the Regional Water Board in making the decision which gives rise to this Petition.

Petitioners appreciate the consideration of these matters by the State Water Resources Control Board.

Very truly yours,

ARCHER NORRIS

Peter W. McGaw

cc: Regional Water Quality Control Board, (Central Valley Region)
Turlock Irrigation District
Oakdale Irrigation District

South San Joaquin Irrigation District
Modesto Irrigation District

Merced Irrigation District Timothy O'Laughlin, Esq.

ATTACHMENTS

ТО

PETITION

May 19, 2006

VIA EMAIL - ORIGINAL TO FOLLOW

Ms. Wendy Cohen Regional Water Quality Control Board-Central Valley Region 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms. Cohen:

Re: Comments on Proposed Resolution, Order NO. R5-2006_____ for Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

The Turlock Irrigation District (TID) appreciates the opportunity to provide additional comments on the proposed Waiver. TID appreciates the Regional Board staff's effort to hear the concerns of the regulated community and incorporate suggested changes into the revised document. However, many of the concerns raised by the previous comments submitted to the Regional Board regarding the previous drafts still remain. Of particular concern is the fact that the current Waiver fails to incorporate previous statements acknowledging that responsibility for discharges of waste to waters of the state lies with those who discharge those wastes, not with those who convey those waters after they contain waste. As such, the previous comments submitted by Debra Liebersbach and Peter McGaw on behalf of the TID are incorporated by reference.

The following is a compilation of comments regarding the revised version of the proposed Waiver.

General Comments

As indicated before to both the Regional Board and staff, TID remains supportive of the agricultural waiver process and the efforts of the local Coalition to comply with the Waiver requirements. TID has provided, and will continue to provide information to the Coalition in support of its effort to understand the local watershed, and coordinate efforts as appropriate for the benefit of the local community. However, for a variety of reasons, TID has elected not to join the Coalition. Instead, the District has applied for coverage as an individual under the existing Waiver program. In doing so, TID submitted all the necessary reports, and has developed and is implementing a Monitoring and Reporting Program designed to characterize the District's applications of pesticides and other District practices that may impact water

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quality.

Nonetheless, despite previous comments regarding the appropriate limitations on Water District responsibilities for discharges by others to irrigation facilities, the draft waiver continues to include language suggesting that Water Districts are responsible for discharges by others into waters of the State. For example, the definition of a water district in Attachment A states that, "Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands, and discharges or threatens to discharge irrigation return flows, tailwater. operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains) and/or stormwater runoff flowing from irrigated lands to water of the State." (Emphasis added). This is an incorrect statement of the law, since Porter-Cologne regulates discharges of waste to waters of the state. (See, e.g., Water Code section 13260). It does not regulate water transfers. It is also inconsistent with earlier statements by Regional Board staff, which acknowledged that responsibility for waste discharges lies with those that generate the waste, not with those that receive the waste. (See Response to Comments, dated November 10, 2005: "...staff agrees that the individual discharge to a conveyance system (a conveyance system that does discharge to, or is itself waters of the State) is the party responsible for its discharge...", page 8.)

In fact, the definition of a "discharge of waste from irrigated lands" has been expanded from the previous version to include not only "surface discharges, such as irrigation return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating systems to lower the water table below irrigated lands (tile drains), stormwater runoff flowing from irrigated lands" but also "stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands." Again, this expanded definition of "discharge of waste" is inconsistent with California law and with earlier statements from staff. Mere conveyance of waste already added by others to waters of the state is not a "discharge of waste." (Does the State "discharge waste" when the San Joaquin River passes the gauge at Vernalis?)

What the proposed Waiver fails to recognize is that those "discharges from irrigated lands" which a water district "accepts or receives" are already covered under the Waiver. The individual grower generating the waste, or the Coalition Group representing that grower, is already responsible for characterizing the discharge of waste from their lands and implementing Best Management Practices (BMPs), if necessary. A water district's application for coverage does not override the individual grower's responsibility for their waste. As stated in Section 13260(a) of the Water Code and referenced under number 6 of the Individual Waiver, "any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State..., shall file... a report of waste discharge... unless the Central Valley Water Board waives such requirement" (emphasis added). Again, the responsibility lies with those generating and discharging the waste to the waters of the state.

The proposed Waiver will also impose duplicate monitoring and other requirements, and duplicate costs, on many growers. Coalition Groups are required to prepare a monitoring plan

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that adequately characterizes the effect of discharges for irrigated lands within the Coalition Group. Similarly, individual growers that have not joined a Coalition Group must develop a monitoring plan to characterize their own discharges. Each is also required to implement BMPs to meet water quality objectives. Between these two sets of dischargers, all discharges of waste from irrigated lands are required to be adequately monitored and mitigated. In addition, however, the Waiver for Individual Dischargers would impose monitoring and other requirements on water districts that are not members of Coalition Groups, by virtue of the fact that they "accept or receive" waste discharged by others. The water district's growers would ultimately pay the cost of monitoring and the cost of implementing any additional requirements. Thus, any grower already paying for monitoring and BMPs, either individually or as part of a Coalition Group, would be paying twice to accomplish the same task. Such an approach is unreasonable and unjust, resulting in unequal requirements and costs under the program. Those that generate the waste, or the Coalition that represents those irrigated lands, should perform monitoring and other activities required for compliance with the Waiver. In this manner, growers are treated consistently throughout the region, from Coalition to Coalition, and Water District to Water District.

The following are more specific comments related to the Individual Discharger Conditional Waiver of Waste Discharges From Irrigated Lands.

- 1. <u>Item 14, page 3:</u> The proposed Waiver references Water Code Section 13267(b)(1) which states that "...the regional board may require any person ... furnish ...technical or monitoring program reports... The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." No one would disagree that water quality in an important issue and that it must be protected. However, it is unreasonable to double-regulate local growers (which must either apply for coverage under the Waiver as an individual or join a Coalition) with land within a Water District that applies for coverage as an individual, to pay twice for coverage and monitoring. The proposed process imposes an unreasonable and unequal burden upon growers that own land in areas where a Water District has chosen not to join the Coalition as opposed to growers in other regions of the Valley. In these areas, growers will be required to pay to implement their own (or their Coalition's) Monitoring and Reporting Program, which presumably provides sufficient information to characterize the impact of their own discharges. The Coalition does and should represent the lands within the Water District that may be discharging to a local waterway, whether that water way is a canal, drain, stream or river. Monitoring by the Water District should focus on the use of pesticides or other practices of the water districts themselves that could potentially impact water quality.
- 2. As you know, TID has expressed concern that water districts not bear responsibility for the waste discharged by others into conveyance systems owned by the districts. TID acknowledges and appreciates the clarification in the "Responses to Comments" dated November 10, 2005 that the intent of these Waivers with respect to discharges to a conveyance system containing waters of the State is to place responsibility for water quality impacts on the discharger to the waters of the State, rather than on the operator of the conveyance system itself. (10 November 2005 Responses to Comments, page 8, "Staff"

agrees that the individual discharger to the conveyance system (a conveyance system that does discharge to, or is itself waters of the State) is the party responsible for its discharge... ..") TID takes Board staff at its word, as stated in this response to comments, and this intent seems to be incorporated into the current proposed Waiver (e.g., "The Conditional Waiver applies to discharges of waste from irrigated lands to surface waters, which are waters of the State." – ID Waiver, page 8, para. 38, "Scope and Description of Individual Discharger Conditional Waiver," emphasis added; also, "Discharger" is defined as the owner or operator of *irrigated lands* that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State." Attachment A, page 2, para. 2.) Unfortunately, however, there also seems to be contradictory language included in this version. For example, the definition of a Water District suggests that a water district may be a "discharger" on the basis of merely receiving waste discharged by others. (Attachment A. Page 4, para. 16). In the absence of a clear statement of intent in the Waiver, such as that in the response to comments, there may be misinterpretation and controversy in the future. To avoid the need to refer to documents outside the Waivers for interpretive guidance. TID suggests incorporating the language from the Responses to Comments into the Waivers. To accomplish this, the language within the waiver should be adjusted in the following sections:

a. <u>Attachment A, page 2, item 2:</u> Language from the Responses to Comments should be added to the end of the definition of "Discharger," as follows:

The individual discharger to a conveyance system (a conveyance system that discharges to, or is itself, waters of the State) is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements.

b. <u>Attachment A. page 2. item 3:</u> The reference to a discharge of waste as including, "...stormwater runoff conveyed in channels or canals resulting from the discharge from irrigated lands" should be removed from the definition. This wording suggests the "conveyance" alone of the stormwater would constitute a discharge. In fact, and as expressed in the November 10, 2005 responses to comments, the discharge of waste occurs when the stormwater runs off the land and enters the waters of the state in the conveyance system. This discharge of waste is already included in the definition's language (i.e. "stormwater runoff flowing from irrigated lands.")

In addition, the definition should to be modified to merely describe a "discharge from irrigated lands," and not a discharge of "waste." The definition of "waste" under item 15, page 3 of Attachment A clearly defines a "waste" for these purposes. All discharges from irrigated lands are not necessarily "waste." Accordingly, Attachment A, page 2, item 3 should be modified to read:

Discharges from irrigated lands – Surface discharges, such as irrigated return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop land or by installing and operating

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drainage systems to lower the water table below irrigated lands (tile drains) and stormwater runoff flowing from irrigated lands.

c. <u>Attachment A, page 4, item 16:</u> The definition of a "Water District" should be revised to conform to the definition in California law by deleting the language that has been added at the end of this section to describe circumstances under which a Water District may also be a "discharger." That language is inappropriate in this section (it is unrelated to the definition of "Water District"), it misstates the law and, as noted above, it misstates the intent of the Waiver (e.g., mere "acceptance" of waste discharged to waters of the State by others does not render the recipient a "discharger"). The definition of Water District should be revised to read as follows:

Water District - California law defines a water district as any district or other political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. (Water Code Section 20200.) Such districts include, but are not limited to, irrigation districts, county water districts, California water districts, water storage districts, reclamation districts, county waterworks districts, drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, flood control districts, flood control and floodwater conservation districts, flood control and water conservation districts, water management agencies, and water agencies.

3. <u>Attachment B, page 2, item 6:</u> "Dischargers shall implement management practices, as necessary, to improve and protect water quality and to achieve compliance with applicable water quality objectives...." This language is overly broad, and it seems based on the premise that only the discharger's actions are impacting water quality. In some cases, there may be upstream sources or background levels that do not meet the established "water quality objectives." In earlier comments, TID referenced Mustang Creek, which flows into TID's conveyance system at times. Upstream dischargers, not TID, are responsible for the water quality impacts of their activities. The language should be revised so that it is clear that an individual discharger is only required to implement BMPs as necessary to ameliorate water quality impacts from *its* activities.

Another concern stems from the indiscriminate use of the phrase "as necessary to improve and protect water quality." Not only does this phrase appear to impose responsibility for upstream discharges, it conflicts with Water Code section 13000. Water Code section 13000 allows for some degradation of water quality from reasonable use. The phrase "as necessary to improve and protect water quality" is standardless and gives dischargers no yardstick against which to measure compliance. The requirement to implement BMPs should be limited to situations where adopted water quality objectives are not being met as a result of the discharger's activities. The language should be revised as follows:

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Dischargers shall implement management practices as necessary to achieve compliance with applicable water quality objectives

4. <u>Attachment B, page 2, item 7</u>: "Dischargers shall not discharge any waste not specifically regulated by the Conditional Waiver, cause new discharges of wastes from irrigated lands that impair surface water quality, or increase discharges of waste or add new wastes that impair surface water quality not previously discharged by the Discharger"

The prohibition of "new" discharges of waste could be interpreted to mean that new pesticides or fertilizers cannot be used by agriculture under this program. This is not a reasonable restriction, and would prevent the use of less toxic alternatives as they come onto the market. This language also might be interpreted to prohibit placing new or fallowed land into production, and might even prevent growing new crops on existing parcels. The agricultural landscape is constantly adjusting to ever-changing conditions. If this is what is intended, it is unattainable and unreasonable. Moreover, it is unnecessary. Any "new" discharges of waste would need to comply with the Waivers or file a report of Waste Discharge. The language should be removed.

Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me at (209) 883-8428.

Sincerely,

- original is signed -

Debra C. Liebersbach Water Planning Department Manager

cc: Central Valley Regional Board Members
Pamela Creedon, Executive Officer, CVRWQCB
William Croyle, CVRWQCB staff
Margie Lopez-Read, CVRWQCB staff



May 19, 2006

Ms Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms Cohen:

RE: Tentative Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

The Merced Irrigation District (Merced ID) appreciates the opportunity to comment on the Tentative Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Waiver). Merced ID offers the following comments:

- 1. Finding 40 on page 9 states in part "A discharge of waste to surface water subject to the Conditional Waiver is one that could directly or indirectly reach surface waters of the State, which include natural streams, constructed agricultural drains, agricultural dominated waterways, and other non-stream tributaries (see Attachment A, Information Sheet), or to other waters which may be hydrologically connected to such waters of the State. Direct discharges may include, for example, discharges directly from piping, tile drains, ditches or sheet flow to surface waters of the State. Indirect discharges may include, for example, discharges from one parcel to another parcel and then to surface waters of the State. This Conditional Waiver applies to discharges of waste to surface waters of the State as a result of irrigation activities, certain irrigation district operations, and stormwater runoff."
- "other waterways which may be hydrologically connected" would include canals operated by irrigation districts. Definition 2 in Tentative Attachment A defines a discharger as the owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State. Definition 16 states that "Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands,". Why is this Waiver set up to regulate dischargers that discharge to irrigation district facilities twice? Whether the discharger is covered as an individual or as a coalition member, the discharger will, in reality, be paying for coverage twice. This Waiver would

- transfer the responsibility of monitoring, reporting and correcting water quality problems from the discharger to the irrigation district. The Waiver definitions need to be rewritten to resolve this problem.
- Please define "certain irrigation district operations" in Finding 40. Irrigation activities and stormwater runoff are pretty clear, but "certain operations" is a very vague statement that could be interpreted to include an unending list of new items.
- 2. Attachment A, Definition 3 includes operation spills as discharges of waste from irrigated lands. This is contradictory to the definition of operational spill stated in Definition 9. Operational spills should be removed from Definition 3.

If you have any questions or comments please contact me at (209) 722-5761 or by email at hetricolorg/hetricolorg/, or Mr. Tom Stephens at (209) 722-5761 or by email at hetricolorg/.

Sincerely,

Hicham ElTal

Hudan Eltel

Assistant General Manager, Water Resources Engineering and Operations Merced Irrigation District

cc:

Mr. Bill Croyle, RWQCB

Edward C. "Ted" Selb III, Merced ID

May 18, 2006

Via Email - Original Signed Copy to Follow

Ms Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms Cohen:

RE: Comments on Proposed Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Wavier)

The Modesto Irrigation District (Modesto ID) appreciates the opportunity to comment on the tentative order for the Proposed Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Waiver). The proposed order represents many hours of work on the part of both the RWQCB staff and the regulated community. Modesto ID supports the five year term of the proposed Waiver as it will allow for the consistent collection of data and evaluation of multiple years of data in order to determine where water quality problems do and do not occur. Only after a consistent data set has been assembled can activities and practices be performed or changed, as needed, to improve water quality.

Modesto ID would like to comment on several of the definitions included in this proposed Waiver document. The first issue with definitions is in regards to "operational spill". Definition #9 defines an operational spill as "Irrigation water that is diverted from a source such as a river, but is discharged without being delivered to or used on an individual field." This definition captures the essence of what an operational spill is. However, in definition #3, discharges of waste from irrigated lands is defined among other things as "operational spills". If definition #9 is true, that it is undelivered water, and Modesto ID would contend it is, then "operational spill" should not be used as an example of a discharge waste from irrigated lands in definition #3. Modesto ID requests the removal of "operation spill" from definition #3. Along this same line, definition #16 states that a water district may be a discharger if it discharges operational spills. For the same reasons that "operational spill" should be removed from definition #3, it should also be removed from definition #16.

In regards to definition #16, it states; "Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands..." However definition #2 states that a discharger is "The owner and/or operator of irrigated lands that discharge or

have the potential to discharge waste that could directly or indirectly reach surface waters of the State." According to definition #17, irrigation district canals are surface waters of the State, therefore the discharger who makes a discharge to a canal is responsible for the discharge, not the irrigation district. The responsibility for a discharge cannot be removed from the discharger and handed to a downstream third party. This reference to water districts being a discharger because it accepts or receives discharges from irrigated lands needs to be removed from definition #16.

If you have any questions or concerns regarding this document, please contact me at (209)-526-7459 or by e-mail at walterw@mid.org.

Sincerely,

Walter Ward Assistant General Manager, Water Operations Modesto Irrigation District

cc: Mr. Bill Croyle, RWQCB

Mr. Robert Schneider, RWQCB-Chair



SSJID

May 18, 2006

Mr. Robert Schneider, Chair The California Regional Water Quality Control Board, Central Valley Region 11020 Sun Center Drive, # 200 Rancho Cordova, California 95670-6114

Attn: William Croyle c.c.: Wendy Cohen

Re: Proposed Resolution, Order NO. R5-2006-____ for Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

Dear Mr. Schneider,

This letter is submitted in behalf of South San Joaquin Irrigation District (SSJID) for comments on the Proposed Resolution, Order NO. R5-2005-____ for Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. At the outset, SSJID notes that by commenting on the proposed Resolution, it is not conceding that the Regional Board may regulate SSJID for the discharge of waste to its canals from an individual discharger that is incidental to irrigation and which SSJID is required to allow under the California Water Code, or for operational spills, as in neither case is SSJID discharging waste to waters of the State.

We would like to acknowledge that the Central Valley Regional Water Quality Control Board has shortened it's name & title to the Central Valley Water Board.

Order

In the Order item 19, page 3 states: Pursuant to the basin Plans and State Water Board plans and policies, including State Water Board Resolution No. 88-63, and consistent with the federal Clean Water Act, the existing and potential beneficial uses of waters in the Central Valley Region include one or more of the following:

A list of Beneficial uses from 'a' to 'u' should clarify that these beneficial uses are not found in every waterway. It is important that anyone reading this Order understand the importance of having only one beneficial use. SSJID would like to remind the Central Valley Water Board that within our system of over 300 miles of lateral canals, pipelines and drainage channels there is only one beneficial use and that is irrigation water (B. Agricultural Supply).

In the Order item 41, page 9; This item should also acknowledge the fact that there are parcels within the

Central Valley Water Board that will never have runoff, and never discharge wastes to surface waters of the State. The numbers of parcels that fall into this category are far more than the Central Valley Water Board would like to admit. Within the last thirty years the advancement of Agricultural practices in irrigation methods have developed to give us; sprinkler, drip, and micro-sprinklers that save millions of gallons of irrigation water each year. Flood irrigation methods have become more efficient with laser leveling of the fields, crop planting patterns, and crop rotation to name a few.

Tentative Attachment A to the Order, page 2, Definition 2, states: Discharger – The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could directly or indirectly reach surface waters of the State.

SSJID acknowledges this definition and it should be noted that Irrigation Districts are not "Dischargers".

Tentative Attachment A to the Order, page 2, Definition 3, states: Discharges of waste from irrigated lands - Surface dischargers, such as irrigation return flows, tail water, operational spills. Drainage water, sub-surface drainage generated by irrigation crop land or by installing and operating drainage systems to lower the water table below irrigated lands (tile drains), storm water runoff flowing from irrigated lands, and/or storm water conveyed in channels or canals resulting from the discharge from irrigated lands.

SSJID acknowledges that this definition applies to the landowner or operator of the irrigated land. The Tributary Rule may determine that channels or canals are waters of the State. Irrigation Districts may be the owners of those channels or canals used for delivering surface water to cropland just as the creeks and rivers belong to the State of California or the Federal Government.

Tentative Attachment A to the Order, page 3, Definition 9, states: Operational spill-Irrigation water that is delivered from a source such as a river, but is discharged without being delivered to or used on an individual field.

SSJID acknowledges this definition as it applies to the Tributary Rule and waters of the State. With respect to this definition an "operational spill" is not a "discharge of waste".

Tentative Attachment A to the Order, page 2, Definition 16. Water District – California law defines water district. For the purposes of the Conditional Waiver, a water district is any district or political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water

(Water Code Section 20200) Such Districts include, but are not limited to, irrigation districts, county water districts, California water districts,, and water agencies. Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands, and discharges or threatens to discharge irrigation return flows, tailwater, operational spills, drainage water, subsurface drainage generated by irrigating crop lands (tile drains) and/or stormwater runoff flowing from irrigated lands to waters of the State.

SSJID contends that "operational spills" as defined in Definition 9 are waters of the State and should not be included in reference to discharges of waste. Further, as waters of the State, any discharge into Irrigation facilities (waters of the State) would be the responsibility of the land owner or operator as stated previously in this Order. And as further clarification we can look at: "Tentative Attachment A to the Order, page 4, Definition 17. Waters of the State - As defined in Water Code Section 13050. Any surface water or groundwater, including saline waters, within the boundaries of the State. The Conditional Waiver regulates discharges of waste from irrigated lands to surface waters."

SSJID has been working with the San Joaquin County & Delta Water Quality Coalition to encourage participation by all of our irrigation customers in the Coalition. In the Water District definition the statement "Water districts may be a discharger if the water district accepts or receives discharges from irrigated lands" is not considering (in SSJID) that the dischargers from the irrigated lands are members of the San Joaquin County & Delta Water Quality Coalition with their own Conditional Waiver of Waste Discharge Requirements from Discharges from Irrigated Lands having their own MRP, and MRPP.

SSJID concedes that this may not be the same with all Water Districts, but due consideration should be made for those Irrigation Districts that fall within the sphere of a coalition group. To require SSJID to monitor the discharges from irrigated lands that are already being monitored by the Coalition Group is a waste of monies, time, and energy.

Tentative Attachment B of this Order, Tasks, Page 5: There is no mention of current NOI's that are on file with Resolution No.R5-2003-0105. Will new NOI's be required?

Thank you for this opportunity to comment on behalf of South San Joaquin Irrigation District. Should you have any questions please contact Jim Atherstone, Environmental Compliance & Safety Officer for the District at (209) 993-7971.

Sincerely yours,

Stevan Stroud General Manager

South San Joaquin Irrigation District

Merced Irrigation District ~ Modesto Irrigation District ~ Oakdale Irrigation District ~ South San Joaquin Irrigation District ~ Turlock Irrigation District ~

January 9, 2006

VIA EMAIL

Ms. Margie Lopez-Read Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, # 200 Rancho Cordova, California 95670-6114

Dear Margie:

Re: Topics to be discussed at the Policy Issues meeting scheduled for January 12, 2006

After our conversation following the Technical Issues Committee meeting on December 6, 2005, the Irrigation Districts ("IDs") were encouraged with the willingness of the Regional Board to work with us in developing a mutually acceptable monitoring plan and reporting plan ("MRP") for IDs applying as individuals under the Conditional Waiver ("Waiver"). Mr. Longley's comments were also encouraging and very much appreciated. We look forward to working with the Regional Board to develop an appropriate plan to monitor water quality impacts associated with the water conveyance system maintenance activities, conducted by IDs, necessary to ensure the timely delivery of water for irrigation purposes. This letter summarizes some of the main policy issues we would like to discuss when we meet with you on January 12, 2006. As requested, a "Policy Issues" table, providing additional information is attached for your reference. Please note that each of the districts has provided extensive comments and input throughout the Waiver development process, both separately, and as a group. The previously submitted comments and testimony provide additional information and background regarding these issues.

The currently proposed MRP appears to be designed to address all types of discharges that could possibly come from any type of water district. Under the California water code, different types of water districts can be formed that provide a wide variety of services to their customers. An MRP inclusive of all water districts presents may issues that do not need to be addressed at this time. With the tight schedule for revising the MRP, it makes sense to focus this MRP on the practices of the Irrigation Districts, rather than a broad list of potential services provided by other types of water districts.

It is appropriate under the Irrigated Lands program for IDs to monitor their maintenance activities, some of which include the use of herbicides to control weeds on canal banks, or the use of mechanical cleaning to ensure aquatic weed growth does not create capacity restrictions,

Ms. Margie Lopez-Read January 9, 2006 Page 2 of 3

inhibiting the flow of water in the canal system. The IDs that applied as individual dischargers support developing a reasonable, economically feasible monitoring program designed to evaluate water quality impacts associated with their own maintenance activities. They also agree that requiring IDs to perform the same monitoring and implementation requirements as coalitions is duplicative and inappropriate for the following reasons:

- The canals operated by the IDs are Waters of the State. The Waiver program requires that all dischargers to Waters of the State obtain coverage under the Waiver by either joining a coalition or applying as an individual. The coalitions and/or growers applying as individuals are responsible for monitoring the quality of their discharges. As a result, the individual and/or coalition monitoring should represent all agricultural discharges to Waters of the State, including ID operated and maintained canals and drains. Requiring the IDs to monitor these same discharges would be duplicative and unwarranted.
- The primary purpose of the IDs canal systems is to deliver irrigation water. An ID's acceptance of any kind of drainage is incidental to the overall water conveyance system, and does not relieve the individual discharger of their responsibility for discharges to Waters of the State.
- IDs do not "represent" the discharges of others under the Waiver program. As a result, if water quality concerns are identified in the course of ID monitoring, that are not a result of irrigation district ("ID") activities (e.g. when herbicides, not known to persist in the environment, are found in a location where the ID had not applied the herbicide upstream within a year), the monitoring information should be reported to the Regional Board and the local coalition, with no further actions required by the ID.
- Since much of the lands within the IDs do not discharge to surface waters, placing the
 burden on IDs to monitor the discharges of others would impose a burden on ID
 customers that are not dischargers. Additionally, there are some discharges that flow into
 local canals from lands outside of ID boundaries. IDs have no ability to collect fees or
 ensure reimbursement for the expenses associated with these discharges. Coalition
 groups know what owners have "signed up" for coverage and can distribute costs
 equitably to all growers represented.

Developing an ID specific monitoring plan, focused on monitoring the effectiveness of management practices used by IDs, when performing maintenance activities, is a more appropriate approach. The goal of the MRP would be to protect the reasonable beneficial use of irrigation for waterways maintained by IDs and to determine if management practices used by IDs are sufficient to prevent discharges of herbicides (applied by IDs), silt or other wastes resulting from the IDs' maintenance activities to other Waters of the State.

This type of monitoring will either rule out the practices of IDs as contributing to water quality impairments, or identify their contribution to a water quality problem. It is important to keep in mind that this type of monitoring is not currently being conducted by the coalitions. As a result, the IDs monitoring would provide additional information to assist in characterizing water quality of local waterways, above and beyond that which is available from the local coalitions. If monitoring data identifies concerns associated with the ID's activities, it is envisioned that the ID

Ms. Margie Lopez-Read January 9, 2006 Page 3 of 3

will evaluate the management practices available and adjust practices as necessary to minimize impacts.

The IDs have a vested interest and a demonstrated commitment to preserving and protecting local waters, and have incurred significant time and expense to evaluate and protect water quality in the region. These efforts include, but are not limited to: working with the Regional Board to comply with the Waiver requirements; working with the local coalition to provide information, as requested, to assist in their efforts; and applying for and administering grant funds to assist the community in addressing local water quality related issues.

As stated above, the IDs are willing to monitor for their own operations under the Irrigated Lands Program and look forward to working with the Regional Board to develop such a monitoring plan. Please contact any of the irrigation districts if you have questions.

Sincerely,

Michael Niemi Water Resources Specialist Modesto Irrigation District Debra C. Liebersbach, P.E. Water Planning Department Manager Turlock Irrigation District

James Atherstone Environmental Compliance and Safety Officer South San Joaquin Irrigation District Kevin King Supervisor Water Operations Oakdale Irrigation District

Thomas Stephens Water Resources Specialist Merced Irrigation District

Enclosures

cc:

William Croyle, RWQCB Wendy Cohen, RWQCB Dania Huggins, RWQCB

MRP Policy Issues

				N	ssue No.
			,	General Comment	Eocation General
The primary purpose of the canal system is to transport water to growers. Tailwater discharges to irrigation district facilities are very small, infrequent, and insignificant compared to the total amount of water flowing through these facilities. In fact, several of the IDs have established rules prohibiting tailwater discharges into the canal system.	In some instances, Irrigation District facilities receive flows from irrigated lands located outside their boundaries with no means of recovering costs associated with those discharges.	As illustrated during recent irrigation district tours, the majority of lands within the five IDs do not discharge to surface waters, but contain the water on their land. As a result, placing the burden of monitoring others discharges on the IDs would impose a burden on ID customers that are not dischargers.	The costs are not reasonable for the proposed list of constituents to be monitored for by the Irrigation Districts. These high costs will be passed on to the customers (who in many cases are already members of a coalition and some of which may not discharge) either by increased rates or through reduced services. Therefore, not only is the large list of monitoring constituents a heavy burden on the Irrigation Districts but also to the farmers who are being charged twice for monitoring.	Porter-Cologne Article 4, § 13165 (Water quality factors) states; "The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained there from."	The Long-Term Monitoring Strategy requirement in Water District MRPs, which again wastes water district resources "jumping through a hoop" that has dubious value.
			(See Issue 3 below.)	Monitoring for the Irrigation Districts should be limited to characterization of water quality issues resulting from Irrigation District practices. The Irrigation District monitoring requirements should not include all chemicals used by agriculture, many of which are not applied by Irrigation Districts.	Remove requirement from MRP

MRP Policy Issues

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Paragraph 1 on page 3 of the Tentative Water District MRP	General Comment	Paragraph 3 on page 1 of the Tentative Water District MRP
Water districts shall collect and review historical data for all wastes in the water system and receiving waters in advance of developing monitoring designs.	The beneficial uses of the waters within the canal system need to be addressed. The only beneficial use of the canals should be clearly defined as for irrigation purposes only. It should also be noted that irrigation should be specific to the types of crops irrigated with the water, and not crops that are unlikely to be grown. Other beneficial uses, such as drinking water and recreational uses are not appropriate beneficial uses of the canal system. Drinking water, for example, is not an authorized use of canal water. It is recognized, however, that downstream water may very well have additional beneficial uses, and that water leaving the canal system should be protective of those downstream uses.	"Water Districts maintain a unique responsibility with respect to irrigated lands in that they are the purveyors of water supply to agricultural practitioners, the holders of agreements for acceptance of agricultural return waters, and the managers of conveyance systems for stormwater discharges from agricultural lands." The Regional Board's Responses to Comments received on the Nov. 10 version of the Waiver stated that "Staff agrees that the individual discharger to the conveyance system (a conveyance system that does discharge to, or is itself waters of the State) is the party responsible for its discharge "
Water districts cannot be held responsible to acquire, compile and distill these vast amounts of data for all receiving waters, including the river system. This requirement should be limited to: (1) reviewing historical data that the Districts have, in their own possession, regarding their own systems; and (2) those constituents of concern due to ID practices, not all wastes.	Appropriate beneficial uses should be protected within the canal system, and the monitoring requirements should be adjusted to be protective of those uses, as well as downstream uses. However, the requirements should be flexible to allow for exceedances within a waterbody so long as the downstream uses (outside the canal system) are protected. For example, if there is an exceedance of a downstream standard for drinking water within the canal should be acceptable so long as it does not result in an exceedance in the downstream receiving waters.	To make the Water Districts responsible for the discharges of others is unjust. The Irrigation Districts do not represent these individual discharges under the Waiver program. In ID's acceptance of any kind of drainage in to the conveyance system does not relieve the individual discharger of their responsibility for their discharge to Waters of the State. The property owner is ultimately responsible for chemicals, herbicides, or pesticides used on their property. Landowners should be members of the Coalition Groups, apply as individuals under the Waiver, or submit a report of Waste Discharge. (See Issue 2 above.) Once the "responsibility" issue is resolved, a monitoring plan can be developed representative of the discharges to be monitored.

MRP Policy Issues

	The minimum requirement language needs to be revised to allow sampling for only known constituents where applicable.	There is no provision that we can see to eliminate constituents if they are not used in a given area. For example, if there are a known number of dischargers to a ditch and the constituents used by each discharger are known, it is unreasonable to require sampling for other than the known constituents used in the area.	General Comment	<u> </u>
<u>.</u>	Clarification is needed. Does the monitoring conducted over the last year apply to the time frame stated in the tentative MRP?	The second paragraph of the MRP requires a minimum of two years of monitoring. The second to last paragraph on page 15 states that a reduction in monitoring can be requested after a minimum of one year.	Paragraph 2 page 1 of the Tentative Water District MRP	10
	Monitoring for the Irrigation Districts should be limited to characterization of water quality issues resulting from Irrigation District practices. The Irrigation District monitoring requirements should not include all chemicals used by agriculture, many of which are not applied by Irrigation Districts. (See Issues 2 and 3 above)	Water districts would be required to perform the same tasks as coalitions and the additional tasks that are specific to the water district MRP. The MRP requires all water district discharges to be monitored unless there is sufficient reason not to monitor a discharge. The MRP requires all constituents to be monitored even if there is no evidence that they are used.	General Comment	. .
	Remove requirement from MRP. This information is available in previous annual reports for the Conditional Ag Waiver and this would be a duplication of information already submitted to the CVRWQCB.	Requires documentation of existing receiving water quality data and quality of typical irrigation discharges.	Number 9 on page 11 of the Tentative Water District MRP	ω
	IDs are not responsible for the discharges of others. Individual farm discharges are the responsibility of the coalition which represents those discharges. IDs are working with coalitions to provide any information they may have, to assist the coalitions in their evaluations.	Requires that water districts produce maps that show irrigated lands, drainage and discharge locations; including showing which fields are served by each drain.	Number 6 on page 11 of the Tentative Water District MRP	7
SEE	Proposed Modification This statement is not necessary since selection of monitoring sites is discussed elsewhere.	"The assessment monitoring must include a sufficient number of monitoring sites based on the grid pattern used by the Water District".	Paragraph 1 on page 7 of the Tentative Water District MRP	Issue No.



November 21, 2005

VIA FACSIMILE – ORIGINAL TO FOLLOW

Ms. Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms. Cohen:

Re: Comments on November 10, 2005 version of the Proposed Renewal of Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region and Associated Monitoring and Reporting Program

The Turlock Irrigation District (TID) appreciates the opportunity to provide additional comments on the proposed Waiver. TID appreciates the Regional Board staff's effort to hear the concerns of the regulated community and incorporate suggested changes into the revised document. The following are a compilation of comments regarding the revised version of the proposed Waiver distributed on November 10th.

Removal of the proposed Monitoring and Reporting Program (MRP) from the Waiver
package scheduled for consideration by the Regional Board on November 28th is a
positive signal. There are significant concerns regarding the current proposal that will
need to be worked through by the Technical Issues Committee (TIC). It is hoped that
such a process will allow for the development of a more reasonable monitoring approach that
will both meet the needs of the program and make the best use of available resources.

It appears as though the intent is to revise the MRP, as necessary, through the TIC forum, and have the Executive Officer approve the revisions. As stated in TID's comments of November 4th, if after the TIC process has taken place there is still controversy amongst the regulated community regarding the proposed MRP, it should be taken back to the Regional Board for its consideration.

2. Individual Waiver, page 7, item 29: TID continues to have concerns regarding the language that each party covered by the Individual Waiver must "implement and evaluate management practices implemented by growers" (emphasis added). This language



appears to be a remnant from a prior draft and does not accurately reflect that Water Districts may also come under the Individual Waiver. It now seems the intent of the proposed Waiver is that each discharger covered by the Individual Waiver is responsible for implementing and evaluating its own management practices (See 10 November 2005 Responses to Comments, page 8, "Staff agrees that the individual discharger... is the party responsible for its discharge..."). TID suggests modifying item 29 so that this portion states that dischargers who enroll under the Individual Waiver are required to "implement and evaluate their own management practices..."

- 3. Individual Waiver, page 9, item 38: When comparing the Coalition Waiver (paragraph 39) to the corresponding paragraph in the Individual Waiver (paragraph 38), it appears as though Staff inadvertently left off the revision to this paragraph in the Individual Waiver. The first sentence of the Individual Waiver, paragraph 38, should be modified to state that the staff was directed to "prepare an EIR to develop a long-term water quality regulatory program to regulate discharges of waste from irrigated lands."
- 4. Individual Waiver, page 10, item 42: The second sentence reflects a parallel change made in the Coalition Group Waiver; however, the reference to the "Coalition Group" in the Individual Waiver should be changed to "Individual Discharger."
- 5. Individual Waiver, page 10, item 45: The first sentence should be modified to state "Discharges of waste from irrigated lands..." Again, this change parallels the change made in the Coalition Waiver.
- 6. Waivers, Attachment A, page 3, items 2 (Individual Waiver) and item 3 (Coalition Waiver): TID acknowledges and appreciates the clarification in the Responses to Comments that the intent of these Waivers with respect to discharges to a conveyance system containing waters of the State is to place responsibility for water quality impacts on the discharger to the waters of the State, rather than on the operator of the conveyance system itself. (10 November 2005 Responses to Comments, page 8, "Staff agrees that the individual discharger to the conveyance system (a conveyance system that does discharge to, or is itself waters of the State) is the party responsible for its discharge.

 "Unfortunately, this language does not actually appear in the Waivers themselves, which may lead to misinterpretation and controversy in the future. To avoid the need to refer to documents outside the Waivers for interpretive guidance, TID suggests incorporating the language from the Responses to Comments into the Waivers. In particular, the language from the Responses to Comments should be added to the end of the definition of "Discharger," as follows:

The individual discharger to a conveyance system (a conveyance system that discharges to, or is itself, waters of the State) is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements.

Ms. Wendy Cohen November 21, 2005 Page 3 of 6

TID also notes that although Water Districts are included in the definition of "Discharger" in the Individual Waiver Attachment A, the Coalition Waiver Attachment A fails to include Water Districts in its version of the definition. It is unclear whether this was just an oversight or an intentional omission.

7. Waivers, Attachment A, page 3, items 3 (Individual Waiver) and item 4 (Coalition Waiver): These two sections define "Discharges of waste from irrigated lands." The definition is unclear and potentially overbroad to the extent that it may include activities that are not actually <u>discharges</u> of waste. For example, this definition could be read to imply that merely conveying waste discharged by others is itself a "discharge of waste from irrigated lands" regulated by the Waivers. As with the preceding definitions of "Discharger," this should be clarified by adding language similar to that used in the Responses to Comments. TID suggests the following be added to the end of the definition of discharges of waste from irrigated lands:

"Discharges of waste from irrigated lands" does not include the conveyance of waste discharged from irrigated lands to waters of the State by others. The individual discharger to a conveyance system that discharges to, or is itself, waters of the State is the party responsible for its discharge, and must apply for either a waiver or apply for waste discharge requirements.

- 8. Individual Waiver, Attachment A, page 3, item 3: The reference to "canals" on the last line is misspelled as "cannels."
- 9. Coalition Waiver, Attachment A, page 4, item 16: The definition of a "Water District" should be revised to conform to the definition in California law by deleting the language that has been added at the end of this section to describe circumstances under which a Water District may also be a "discharger." That language is inappropriate in this section (it is unrelated to the definition of "Water District") and it misstates the law (e.g., mere "acceptance" of waste discharged to waters of the State by others does not render the recipient a "discharger"). This statement, moreover, is inconsistent with the statement in the Response to Comments acknowledging that responsibility for discharges of waste falls on those that generate the waste and discharge it to waters of the State.

The language that has been added to the definition of "Water District" is perhaps intended to expand upon an analogy drawn in the Response to Comments between a municipal collection system that discharges to a stream. The analogy does not withstand scrutiny, however, as there is a significant difference between the regulatory authority governing a municipal collection system and the conveyance systems operated by TID and other irrigation districts. Municipal collection systems discharging to streams are regulated under the Federal Clean Water Act as "point sources" discharging to "waters of the United States." Discharges consisting primarily of agricultural return flows, however, are exempt from the NPDES program of the Federal Clean Water Act. Instead, they are

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regulated under state law, which regulates discharges to "waters of the State." "Waters of the State" is defined far more broadly than "waters of the United States," which consist of just navigable waters and their tributaries. In other words, while both regulatory schemes regulate discharges to particular waters, the waters covered by the state program is a far broader set. Thus, it is entirely consistent that a discharge of waste from a "collection system" would be regulated under the Federal system whereas a discharge to a supposedly analogous system would be regulated under the State system.

A better analogy for conveyance systems similar to irrigation canals would be a drain, ditch, or creek running across several parcels of land owned by various parties. Throughout length of the conveyance system, individual property owners may have installed check structures in various locations to enable them to make use of the water passing through their property. Each property owner has the potential to use the facility to collect runoff or tailwater and convey it to the next parcel. The water flowing in the facility is waters of the State, and each property owner located along the entire length of the facility could potentially discharge "waste" to those waters of the State. In some instances, there may even be properties that are not adjacent to the facility, that have piped discharges of waste to the facility. Each property owner is responsible for any waste that they themselves contribute or discharge to the waterway. Downstream property owners are not responsible for the waste that upstream dischargers may have added to the water that flows through the conveyance facility located on their property, even though the property owner "operates and maintains" the facilities on their property or because they may intermittently place a weir or gate in the facility to collect the flow to make use of it. To conclude otherwise, would make the furthest downstream property owner responsible for all the waste contributed by every upstream property owner, imposing an unfair burden on the furthest downstream property owner. There is no basis for imposing such responsibility under Porter-Cologne.

Just as federal law regulates discharges to waters of the United States, state law regulates discharges to waters of the State. Once waste has been discharged to "waters of the State" flowing into and conveyed in TID's facilities by upstream dischargers, it cannot be "discharged" to those same waters again. The fact that water may pass over a weir or through a gate does not constitute a "discharge of waste to waters of the State," since the water of the State on the upstream side of the weir or gate is the same water as it is on the downstream side. The water upstream of the weir or gate already contains the waste in question. Passing through the weir or gate does not change the constituents in the water and does not result in a "discharge of waste to waters of the State." The "waste" is already in the water of the State before it passes the weir or gate. In short, "conveyance" of waters of the State that already contains waste is not a "discharge" of waste to those same waters. Please see correspondence from Archer Norris on behalf of TID, to Chairman Schneider, dated November 4, 2005 for a full discussion of this issue.

Ms. Wendy Cohen November 21, 2005 Page 5 of 6

10. Individual and Coalition Waivers, Information Sheet, Table 1: There is still considerable controversy regarding how to interpret and apply the appropriate "receiving water limits" for discharges to various water bodies regulated through this program. For all intents and purposes, the "receiving water limits" listed in Table 1 are intended to be a listing of the "applicable" water quality objectives established in the Basin Plan. The process of adopting water quality objectives requires the evaluation of several possibly conflicting factors, the ultimate goal of which is to develop standards that provide for the reasonable regulation of water quality consistent with the best interests of the people of the state. See Water Code §13241. The water quality objectives presently contained in the Basin Plan were never considered for their potential application to non-stream, agriculturally dominated waterbodies. Thus, they cannot be applied summarily to those water bodies without first undergoing the rigorous analysis required by section 13241.

Moreover, under the Water Code, applicable water quality objectives are specifically tied to formally designated beneficial uses. As recently recognized by the Regional Board, many "non-stream" (i.e., man-made or substantially altered), agriculturally dominated water bodies do not have formally-designated beneficial uses. See Resolution No. R5-2005-0137. Whether these non-stream water bodies have "default" beneficial uses under other laws or policies is the subject of considerable debate. It is clear, however, that in many circumstances it would be inappropriate to apply water quality objectives to particular waterbodies based on certain presumed beneficial uses. See, e.g., In the Matter of the Review on Own Motion of Waste Discharge Requirements Order No. 5-01-044 For Vacaville's Easterly Wastewater Treatment Plant, SWRCB WQO 2003-0015.

Finally, the various constituents to be evaluated are not known at this time, but will be determined through the TIC process. Finally, there are still several errors in Table 1 (for example, standards for color and turbidity are not California Primary MCLs, which are human-health-based standards.)

Under these circumstances, Table 1 should be removed from the proposed Waiver being considered on November 28th. As the monitoring parameters are determined through the TIC review process, a table similar to Table 1 should be generated to clarify for the regulated community the numeric values or narrative standards by which the ultimate success of the Waiver program will be measured. These values will also be helpful to the TIC in determining the PQLs and TRLs for the program. Since there are several locations within the Waiver text that reference Table 1, these should also be revised accordingly.

11. Waivers, Attachment B, page 2, item 6 (Individual Waiver) and item 7 (Coalition Waiver): As stated within the current draft of the Waivers, "Dischargers shall implement management practices to improve and protect water quality and to achieve compliance with applicable receiving water limitations identified in Attachment A." First, the reference to "identified in Attachment A" invites confusion. Applicable

Ms. Wendy Cohen November 21, 2005 Page 6 of 6

receiving water limits are those established in the Basin Plan, not those "identified in Attachment A." Second, the requirement to "implement management practices... to achieve compliance with applicable receiving water limitations" may be impossible in some instances. For example, natural conditions may cause exceedances of proposed receiving water limits. Dischargers should not be held responsible for natural conditions or the discharges of others, and/or be at risk of non-compliance with the Waiver if receiving waters do not meet water quality objectives, if they have not caused or contributed to the non-compliance. This language should be modified so that management practices will be implemented when and if the impairments are due to practices of the discharger (or in the instance of the Coalition, the Coalition members). There is similar language in other locations within the text of both Waivers that should be revised for consistency. For example, some of the references to similar language can be found in the following locations: Page 6, item #23; Page 7, item #29; Page 11, item #50; Attachment B, page 4, item #6a; and Attachment B, page 5, item #C2.

- 12. Individual Waiver, Attachment B, page 6, item E: The language currently included within this section references the Coalition Groups, rather than the requirements of individual dischargers.
- 13. Individual Waiver, Attachment B, page 9, NOT: The Notice of Termination (NOT) should be revised to reflect the revisions to definitions within the Waiver program. For instance, definitions of facilities and farms requiring coverage under the Waiver have changed and the NOT should be modified accordingly.
- 14. Coalition Waiver, page 16, item 6: The last sentence should be adjusted to state that "...discharges of waste from irrigated lands do not impair beneficial uses..."

Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me at (209) 883-8428.

Sincerely,

Delfra C. Liebersbach, P.E.

Water-Planning Department Manager

cc: Central Valley Regional Board Members
Thomas Pinkos, Executive Officer, CVRWQCB
William Croyle, CVRWQCB staff
Margie Lopez-Read, CVRWQCB staff



November 4, 2005

VIA EMAIL - ORIGINAL TO FOLLOW

Ms. Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms. Cohen:

Re: Comments on October 5, 2005 Proposed Renewal of Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region and Associated Monitoring and Reporting Program

The Turlock Irrigation District (TID) appreciates the opportunity to provide comments on the proposed revisions to the Conditional Waiver program and trusts that staff will strongly consider the comments raised, and incorporate them into the waiver process. This letter provides a variety of comments, on several of the documents prepared for the Regional Board's consideration. The comments are compiled below under the heading "General Comments" or the individual document title, for easy reference.

General Comments

As indicated before to both the Regional Board and staff, the TID remains supportive of the efforts of the local Coalition. We have provided, and will continue to provide information to the Coalition in their effort to understand the local watershed, and coordinate efforts as appropriate for the benefit of the local community. However, for a variety of reasons, we have elected not to join the Coalition. Instead, we have applied for coverage as individuals under the existing Waiver program. In doing so, we submitted all the necessary reports, and developed and implemented a Monitoring and Reporting Program designed to characterize the District's applications of pesticides and other practices that may impact water quality.

Despite these efforts, the Regional Board staff continues to believe the Water Districts do not fit within the original concept developed for individual discharges. In the new Individual Waiver documents, Water Districts are referenced as having a "unique



responsibility with respect to irrigated lands in that they are purveyors of water supply to agricultural practitioners, the holders of agreements for acceptance of agricultural return waters, and the managers of conveyance systems for stormwater discharges from agricultural lands." (Monitoring and Reporting Plan for Water Districts, pg. 1) Therefore, when a Water District "...accepts or receives discharges from irrigated lands..." (draft Individual Waiver, definition of "Discharger") the proposed waiver assumes that the Water District is assuming the responsibility for the water quality of those discharges.

What the proposed waiver neglects to recognize is that those "discharges from irrigated lands" which a Water District, applying as an individual, "accepts or receives" should already be covered under the waiver. The District's application for coverage does not remove the individual grower's responsibility for coverage of their discharges. As stated in Section 13260(a) of the Water Code and referenced under number 6 of the Individual Waiver, "any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State..., shall file... a report of waste discharge... unless the Central Valley Water waives such requirement" (emphasis added).

With the proposed waiver program, if a Water District applies as an individual discharger, it is required to do monitoring for the discharges within its system by virtue of the fact that it accepts or receives the discharges, but the individual discharger, or Coalition that represents that individual, is also required to do monitoring for those same discharges. However, it is the Coalition that is collecting the fees to cover monitoring and the other costs associated with representing the individual discharger in the waiver process.

When this issue was raised in comments to an initial version of the Monitoring and Reporting Program, the Regional Board staff's response was that "the water districts should not assume that all agricultural practitioners discharging to their canals are members of a Coalition Group." In listening to recent discussions before the Regional Board, it is our understanding that staff has had a difficult time identifying which growers are members of a Coalition. Although we recognizing and empathize that this is indeed a difficult task, the Regional Board should not reassign responsibility of those discharges to the Water District because they are unable to identify which discharger is a member and which is not.

Requiring a Water District that applies for coverage as an individual to monitor for the discharges of others is duplicative, and unwarranted. In doing so, the draft Waiver requires the Water District to incur significant monitoring expenses it will be unable to recover the cost for, since the growers would not likely accept paying twice for the same service. If local canals and/or drains need to be monitored for discharges from irrigated lands, they should be monitored by the Coalition, regardless of whether the respective Water District is a member of the Coalition or not. In this manner, the growers are treated consistently from Coalition to Coalition, and Water District to Water District.

¹ Citation from pg. 2 of the "Comments Received on draft version of Water District MRP and Water Board Staff Responses" matrix prepared by Regional Board staff and received via email from Wendy Cohen on October 3, 2005.

For Water Districts that apply as individuals, the monitoring plans should be designed to supplement the monitoring being done by the local Coalition, with more specific monitoring related to the Water District's practices that may result in potential discharges of waste or impact water quality. The mere transport of water within a canal or drain is not a discharge of waste, and should not trigger monitoring requirements. The draft Waiver and Monitoring Plan as currently proposed goes well beyond the potential impacts created by Districts, and requires monitoring that is as much, if not more than that required by the local Coalition. Such a program is unreasonable, and exceedingly costly to implement.

In an effort to suggest to the Regional Board that the proposed program is affordable for the Districts, the October Executive Officer's Report to the Regional Board states that, "The San Joaquin River Group Authority (represented by the five Districts) has been awarded funding from Proposition 13 Nonpoint Source Pollution Control Grant Program called the East San Joaquin Water Quality Framework. The monitoring for this project includes 48 water quality monitoring sites throughout the Districts' systems. Monitoring parameters will include the constituents that are required by the MRP for Individual Dischargers as well as for coalitions including toxicity, pesticides, nutrients and general water quality parameters. This is a proactive approach that the Districts have taken that will help them manage any additional monitoring requirements that may be the result of a water-district specific MRP for the Conditional Waiver Program."

While the Districts' have received funding for monitoring within the local area, it is uncertain to what extent the monitoring under the grant funding will overlap the monitoring that will be required by the Waiver. The grant's monitoring program was developed without the benefit of knowing the monitoring requirements under the proposed waiver. As a result, the program was focused on developing an understanding of the water quality within the various waterways, and will include monitoring for some of the most frequently used pesticides within the region. The grant funding expires in March 2007, but monitoring required under the waiver program will extend well beyond that point in time. Due to the extremely short grant funding timeframe, there is no ability to go back and revise the monitoring program to meet the requirements of the waiver. Therefore, although the grant funding will assist the local community and provide valuable data to help characterize water quality within the region, in all reality, it is not likely to provide much assistance in helping the Districts to "manage any additional monitoring requirements" as indicated by the Executive Officer's Report.

The following comments are more specific comments related to the various documents under consideration by the Regional Board for the Waiver Program:

Individual Discharger Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands

Item 15, page 3: The proposed Waiver references the Water Code, Section 13269(a)(3) which states, "The... regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water

quality." The list of constituents identified for monitoring is extensive. Water District's do not and have not utilized many of the pesticides identified. The Regional Board has the discretion under 13269(a)(3) to waive the monitoring requirements for chemicals that the Districts do not use. The monitoring being conducted by the Coalitions, representing the growers that do use those chemicals, should be sufficient to characterize the discharges from those lands, and determine if there are any potential water quality issues associated with those chemicals.

- 2. Item 17. page 4: The proposed Waiver references Water Code Section 13267(b)(1) which states that "...the regional board may require any person ... furnish ...technical or monitoring program reports... The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports." Although no one would argue that water quality in an important issue and that it must be protected. However, it is unreasonable to double regulate local growers (which must either apply for coverage under the Waiver as an individual or join a Coalition) with land within a Water District that applies for coverage as an individual, to pay twice for coverage and monitoring. The proposed process imposes an unreasonable and unequal burden upon growers that own land in areas where a Water District has chosen not to join the Coalition as opposed to growers in other regions of the Valley. Monitoring by the Coalition does and should represent the lands within the Water District that may be discharging to a local waterway, whether that water way is a canal, drain, stream or river. Monitoring by the Water District should focus on those pieces of data not required to be obtained by the Coalition (i.e. the use of pesticides or other Water District practices that could potentially impact water quality).
- 3. <u>Item 29. page 7:</u> The proposed Waiver requires that "Dischargers who enroll in the Individual... Waiver to... implement and evaluate management practices implemented by growers that will result in achieving compliance with receiving water limitations..." (emphasis added). Individual growers are responsible for implementing management practices for their individual farms. There is no mechanism for the Water Districts to know what management practices are being implemented by growers, and whether or not they are being effective.

The recent Diazinon and Chlorpyrifos Basin Plan Amendment also requires the implementation and evaluation of management practices in the form of management plans. TID submitted comments during the BPA adoption process specifying that management plans should only be required by those that utilize the pesticides. Regional Board staff's response to comments stated that, "As used in the Basin Plan Amendment Language concerning Management Plans, the term 'discharger' presumes that the discharger is using diazinon and/or chlorpyrifos in their agricultural operations. Management plans requirements for this Basin Plan Amendment will only apply to potential dischargers of diazinon and/or chlorpyrifos." The response, though logical and very reasonable, is not consistent with the approach described within the draft Waiver. The District does not use diazinon or chlorpyrifos. As proposed, the Waiver would make Water Districts responsible for the management practices and discharges of others,

including any discharges containing diazinon and chlorpyrifos, or any of the other pesticides included in the monitoring plan that are not utilized by the District.

The language of the Waiver should be modified to indicate that Water Districts who apply for coverage under the Individual Waiver are not responsible for the water quality of discharges from others into conveyance facilities and are not required to "implement and evaluate" the management practices of others.

- 4. <u>Item 48, page 11:</u> The proposed Waiver states that the "Individual... Waiver includes receiving water limitations based upon existing water quality objectives contained in the Regional Board's Basin Plans, the NTR, and the CTR." While developing the list in Table 1, which contains the receiving water limits identified, Staff made an effort to identify the appropriate receiving water limits for each chemical included in the monitoring plan. It appears as though the receiving water limits identified were the lowest value they could find in any of the references available. They are not necessarily existing WQOs within the Basin Plan, NTR or CTR. In some cases, the limit was identified as one-tenth of the LC50 referenced on the PAN database, populated by the Pesticide Action Network. The PAN database is known to have QA/QC issues and should not be quoted as the determining factor for establishing the receiving water limitations for agricultural waterways. Should the Regional Board wish to utilize the database as a reference, it should only be used to guide staff to available reputable published information or references. The original articles and/or studies should be consulted to ensure the appropriate units and values are referenced.
- 5. Page 13, item 3: "A Discharger may not discharge any waste not specifically regulated by the Individual Discharger Conditional Waiver except in compliance with the Water Code." Under the proposed Waiver, Water Districts are essentially held responsible for the discharges that come into their system. This statement implies that no other discharge of waste is allowed, other than discharges regulated under the Waiver. The canals are multi-purpose use facilities. The majority of water within the TID canal system during the irrigation season are comprised of freshwater flows from the Tuolumne River. Although some agricultural discharges do occur, there are also urban inflows into these systems that are not agricultural discharges. The same would be true during the non-irrigation season. Stormwater flows from both the urban and agricultural setting are discharged into the canal system. With the proposed modifications to the waiver assigning Water District's "responsibility" for discharges that enter their conveyance facilities, would Water Districts that apply for coverage under the proposed Waiver be out of compliance due to the urban discharges?
- 6. <u>Attachment A, Table 1:</u> Table 1 identifies the constituents to be monitored as well as the proposed receiving water limits for those constituents. It is unclear how the extensive list of constituents was generated. There should be flexibility built into the Waiver to allow for individuals, Water Districts or Coalitions that have not used specific chemicals to not be required to monitor for them, thereby focusing limited funds on monitoring for those constituents that are most likely to be present in the local waterway. If in the future, it is determined that additional data is needed to characterize water quality, or problems arise

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that are not identifiable through this process, additional monitoring can be conducted on a site-by-site basis to resolve an isolated issue. But requiring such a large number of constituents to be monitored throughout the valley, seems unnecessary and a waste of valuable resources.

It should also be recognized that some of the waterways proposed to be monitored are fully lined with concrete. These types of facilities do not lend themselves to sediment testing. Flexibility needs to be given within the framework of the waiver to develop a monitoring program that makes sense for the particular facility being monitored.

Monitoring for toxicity, as well as the myriad of pesticides and herbicides listed on Table 1, seems unnecessary and excessive. Monitoring should be able to focus on the limited number of chemicals that are being used by the individual or Water District, or in the case of the Coalitions, where there may be a significant number of chemicals being used in a given area, initial monitoring should utilize toxicity testing to evaluate the condition of the waterway. If problems are identified from the initial monitoring, more detailed monitoring could be utilized to further evaluate the cause. This type of approach would provide the data needed to characterize water quality yet minimize the cost of the monitoring program.

Receiving water limitations need to have a sound scientific basis and site-specific relevance. The scientific basis and site-specific applicability for many of the values in Tentative Table 1 are not clear. For example, the U.S. EPA chronic criteria (for total ammonia) have been developed on the basis of extensive scientific research and reflect variable pH and temperature and early life stage conditions. It is not clear what the basis is for the Tulare Lake Basin Plan value (un-ionized ammonia) and where it would be applied.

The Ag Waiver reflects several limits that are equivalent to 1/10 of the LC50 for the most sensitive species. It is not clear which sensitive species were used and if they are even present or expected to be present in the site-specific receiving waters of concern. The 1/10 LC50 values are quite low, frequently well below the PQLs, and may not be achievable.

There are also numerous inconsistencies in the limits presented in Tentative Table 1 as compared to other regulatory programs, which will cause confusion and difficulty with compliance. For example, many of the values listed in Table 1 are lower than the Water Quality Guidelines that are used to identify impaired waters for the 303(d) list (see Table 4 of the Staff Report - Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments, dated September 2005). For illustration purposes, the following provides a summary of the different limits that have been presented for diazinon and chlorpyrifos for the San Joaquin River system. It is important that the limitations in the ag waiver are consistent with local basin plans, TMDLs, and the 303(d) list.

	Chlorpyrifos (ug/L)	Diazinon (ug/L)
Existing Regulatory Programs 303(d) Water Quality Guidelines Compilation of Water Quality Goals	0.10 0.05/0.10	0.014 0.014/0.041
Draft Waiver Table 1 (Attachment A)		
Draft San Joaquin River Basin Plan Amendmen Basin Plan (at 1/10 LC50)	it 0.10 0.003	0.015 0.004 or 0.006

It is important to note that the laboratory PQL for both of these substances is 0.02 ug/L, less than one of the limits proposed for diazinon.

Finally, the total dissolved solids (TDS) goal of 500 ug/L seems to be in error. The value references the California Primary MCL as its source, but TDS is regulated as a secondary MCL at 500 mg/L. The 500 mg/L secondary MCL goal for TDS is documented in "A Compilation of Water Quality Goals" (Central Valley RWQCB, August 2003) and the California Department of Health Services website.

- 7. <u>Attachment B. page 2, item 5:</u> "For the purposes of the ... Waiver, an 'exceedance' is a reading using a field instrument or a detection by a ...laboratory where the detected result is above the receiving water limitation... Receiving water limitations implement the appropriate Basin Plan's numeric and narrative water quality objectives. An exceedance also is a ...laboratory analytical result reported as non-detect when the reporting limit is higher than the receiving water limitation..."
 - a. This paragraph illustrates the importance of the receiving water limitations referenced in Table 1. They are essentially a means of establishing the "water quality objectives" that must be met and will be used to determine compliance with the Waiver program. It is imperative that the limits identified are reasonable and scientifically sound. More work needs to be done on this issue. It is recommended that the listing be removed for the waiver at this time to allow for a more thorough and thoughtful approach to developing the receiving water limits, and enable the regulated community sufficient time to evaluate and comment on the proposed objectives.
 - b. It is unclear if there are labs available that can test down to the levels that have been identified within the Waiver documentation. As a result, once the appropriate receiving water limits are identified, a listing of the PQLs that the laboratories can achieve should be provided. In addition, the Regional Board should ensure that there are enough laboratories, available to the public, that can meet the prescribed limits. When we have raised this issue in the past, Regional Board staff has indicated they have identified laboratories that can meet these requirements. A listing of the laboratories that the RWQCB has identified, that can comply with the requirements, should be provided. In that way, the regulated community is assured there are

sufficient labs available to meet the extensive monitoring needs of the program. If the labs are not available, then adjustments to the requirements should be made to ensure dischargers are not found out of compliance with the requirements by virtue of laboratory constraints. By providing such a list, it would in no way constrain the dischargers to utilize one of the laboratories identified. It would merely ensure there are enough labs available, and identify labs that could be considered for use.

- 8. Attachment B, page 2, item 6: "Dischargers shall implement management practices to improve and protect water quality and to achieve compliance with applicable receiving water limitations..." This language assumes that the discharges are impacting water quality. In some cases, there may be upstream sources or background levels that do not meet the established "receiving water limitations." One such example is the influence of groundwater in local drains. In such a situation, growers should not be required to implement BMPs to "improve and protect water quality." BMPs should only be required if the dischargers practices have resulted in the exceedance of the receiving water limitations.
- 9. Attachment B, page 2, item 7: "Dischargers shall not discharge any waste not specifically regulated by the Individual... Waiver, cause new discharges of wastes from irrigated lands that impair surface water quality, or add new wastes that impair surface water quality not previously discharged by the Discharger..." The first part of the sentence deals with the same issue identified under comment number 5 above. In addition, the statement seems to imply that new pesticides or fertilizers cannot be used by agriculture under this program. That's not a reasonable expectation. Does that also mean that new land could not be placed into production, new crops cannot be grown on any given parcel, and new tile drains or field drains could not be installed? The agricultural landscape is constantly adjusting as the ever-changing conditions. This requirement is unattainable and should be removed.
- 10. Attachment B, page 2, item 11: See comment number 5 above.
- 11. Attachment B, page 6, item D: The timeframe for submitting the Monitoring and Reporting Program (MRP) Plan should be extended. The MRP requirements for this new waiver is significantly different from the existing waiver, and will likely require submittal of an entirely new MRP Plan. Once submitted, it will take time for the Regional Board staff to review the MRP Plan and for the Water Districts to develop any necessary revisions. The proposed Waiver is unclear as to the amount of time given to comply with the requirements. Item D gives individuals 30-150 days to submit the MRP, while the MRP Plan Requirements for Water Districts only gives 120 days to implement the MRP for Water Districts that have already received an NOA. The 120 days given is not enough time to develop the MRP, receive approval and begin implementation. Due to the significance of the changes proposed, Water Districts should be given at least 180 days to submit the new MRP Plan. Once it is approved, an additional 60 days is required for agencies to go through the competitive bidding process to contract with laboratories and begin implementation. All references to these deadlines within the waiver documents should be adjusted accordingly.

Monitoring and Reporting Program for Water Districts Enrolled as Individual Dischargers under Individual Waiver

1. The District has numerous comments and suggestions regarding the proposed MRP. From recent email correspondence from the Regional Board staff, stakeholders were advised that the MRP would be removed from the Waiver package to be considered by the Regional Board later this month. The draft MRP would instead be discussed and revised through the Technical Issues Committee (TIC). It is hoped that such a process will allow for the development of a more reasonable, monitoring approach that will both meet the needs of the program and make the best use of available resources. As a result of this late change, no specific comments on the MRP are offered here. Comments will be provided through the TIC process.

However, it is unclear how the revision process will be accomplished, and how the final MRP will be approved. If, after the TIC process has taken place, there is still controversy amongst the regulated community regarding the proposed MRP, it should be taken back to the Regional Board for their consideration.

Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me at (209) 883-8428.

Sincerely,

Debra & Liebersbach, P.E.

Water Planning Department Manager

cc: Robert Schneider, Chair, CVRWQCB
Thomas Pinkos, Executive Officer, CVRWQCB
William Croyle, CVRWQCB staff
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Peter W. McGaw pmcqaw@archemorris.com

October 18, 2005

BY FACSIMILE AND U.S. MAIL

Mr. Robert Schneider, Chair Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Attn: Wendy Cohen

Re: Proposed Resolution Adding Information Sheet To Resolution No. R5-2003-0105 Conditional Waivers Of Waste Discharge Requirements For Discharges From Irrigated Lands Within The Central Valley Region, entitled "APPLICATION OF RECEIVING WATER LIMITATIONS CONTAINED IN CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS PURSUANT TO RESOLUTION NO. R5-2003-0105"

Dear Mr. Schneider:

This letter is submitted on behalf of the Turlock Irrigation District (TID) to comment on the proposed addition to the Conditional Waivers Of Waste Discharge Requirements For Discharges From Irrigated Lands Within The Central Valley Region (Resolution No. R5-2003-0105) an "Information Sheet" entitled "APPLICATION OF RECEIVING WATER LIMITATIONS CONTAINED IN CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS PURSUANT TO RESOLUTION NO. R5-2003-0105" ("Information Sheet"). These comments are intended to supplement but not replace TID's earlier comments dated August 23, 2005, as well as the comments made by TID and others at the Workshop on September 13, 2005, which are incorporated here by reference.

In addition to those earlier comments, TID has several concerns with respect to the newest version of the "Information Sheet." These are:

1. The Information Sheet Affirms that the Conditional Waiver Establishes Beneficial Uses And Water Quality Objectives For Previously Undesignated Waterbodies.

The latest version of the Information Sheet states, "The Conditional Waivers *impose* receiving water limitations upon agricultural dominated waterways and constructed agricultural drains to the same extent as on other waters of the state within the Central Valley Region." (Information Sheet, Item 2; emphasis added). This statement clearly acknowledges what TID and others have noted before: that the Conditional Waiver, for the first time, *imposes* receiving water limitations based on water quality objectives on agricultural drains and agricultural dominated waterhodies.

When those water quality objectives were adopted, there was never any consideration given to their applicability to these waterbodies. There has never been a proper analysis of the beneficial uses of these waterbodies, as required by Water Code section 13241(a)), nor has there ever been any consideration of the cost of imposing these water quality objectives to these waterbodies, as required by Water Code section 13241(d). Additionally, the Basin Plan does not include an implementation plan for meeting these water quality objectives in agricultural dominated water bodies, as is required by Water Code section 13242.

In short, the Information Sheet simply confirms that the water quality objectives in the Basin Plan are invalid, at least to the extent they might be applied to agricultural dominated waterbodies. Having never formally "designated" the waterways in question here, the Basin Plan did not, and could not, have established water quality objectives for those waterways. Indeed, as the Superior Court recognized:

"Factors to be considered in establishing WQOs must include the 'past, present, and probable future beneficial uses of water.' Without the benefit of beneficial use assessments, it is unclear whether the Board has established WQOs -- or how it properly could have established WQOs -- for many of the agricultural channels that receive discharges from irrigated lands."

(DeltaKeeper/California Farm Bureau v. SWRCB, Trial Court Decision, Page 26, emphasis added). 1

Similarly, the "tributary statement" could not have designated beneficial uses for agricultural waterways that may be tributary to federal waterbodies, since this theory of federal jurisdiction was never articulated by the Regional Board until the *Talent Irrigation District* decision was published. Certainly, the Regional Board's administrative record for the Basin Plan adoption does not reflect any such consideration. There was not, and could not have been, a proper section 13241 analysis of applying downstream beneficial uses to upstream agricultural waterbodies at the time the tributary statement was incorporated into the Basin Plan.

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The Regional Board cannot simply "impose" water quality objectives by adopting a Conditional Waiver. It must go through a proper rulemaking process, which would include an affirmative determination of the *appropriate* and *reasonably achievable* beneficial uses of these waterbodies, and a determination of the water quality objectives *reasonably* necessary to protect those beneficial uses.

2. The Information Sheet Blurs The Distinction Between "Streams" And Constructed Agricultural Waterbodies

The Court's ruling noted that the so-called tributary rule, by its own terms, applies only to "streams." Earlier versions of the Information Sheet acknowledged this reading of the tributary statement. The current version, however, no longer recites this acknowledgement. It now says, "The Regional Board generally does not use the tributary rule to determine beneficial uses for constructed agricultural drains. The tributary rule generally does apply to agricultural dominated water bodies." (Information Sheet, Item 3). The Regional Board should clarify its application of the "tributary rule" by reinserting the statement from earlier versions of the Information Sheet. That statement said, "The Regional Water Board has concluded that, because of its use of the term 'tributary streams,' the 'tributary rule' applies only to 'streams'."

3. Designation of Beneficial Uses by Reference to "Other Laws and Policies" Is A Rulemaking That Fails To Comply With The Administrative Procedure Act

The current version of the Information Sheet states, "Even if a water body is not listed and the tributary rule does not apply, beneficial uses of water bodies may be designated pursuant to other laws or policies." (Information Sheet, Item 3). As TID noted previously, beneficial uses cannot be "designated" by "other laws or policies." This language provides the regulated community no guidance as to which beneficial uses and water quality objectives are applicable to a given waterbody. For example, although Regional Board staff has previously referenced the "fishable/swimmable" goals under the Clean Water Act, these are not "designated beneficial uses" under Porter-Cologne – they are merely federal goals. There is neither a "fishable" nor a "swimmable" beneficial use in the Basin Plan, nor does the Basin Plan establish water quality objectives for either "fishable" or "swimmable" beneficial uses.

Designation of beneficial uses is a hydrographic-unit specific determination.² Reliance on undisclosed "other laws or policies" to establish beneficial uses and water quality objectives violates the California Administrative Procedure Act. That Act requires that every regulation conform to the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Government Code Section 11349.1. Government Code Section 11349(c) defines "clarity," in particular, as, "... written or displayed so that the

One of the factors that must be considered when establishing Water Quality Objectives is the "Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto." Section 13241(b). This has clearly never been done for the agricultural drains and agricultural dominated waterbodies at issue here.

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meaning of regulations will be easily understood by those persons directly affected by them." Incorporating by reference "other laws and policies" to designate beneficial uses and apply water quality objectives to particular waterbodies lacks clarity, in violation of the Administrative Procedures Act, particularly where those "other laws and policies" are not even identified. Similarly, relying on "other laws and policies" to establish beneficial uses, when those "other laws and policies" never attempted to conform to section 13241 and 13242, is equally violative of the Administrative Procedure Act.

Water Code section 13241(a) specifically requires a formal determination of the "past, present, and probable future beneficial uses" when establishing water quality objectives applicable to a particular waterbody. To the extent that the Information Sheet purports to establish beneficial uses for waterbodies not previously designated by a formal, basin-planning process, it circumvents the water-body-specific analysis required by section 13241 and fails to simultaneously adopt an implementation plan, as required by section 13242.

In conclusion, the Information Sheet purports to designate beneficial uses for waterways for which beneficial uses have never before been designated, and then applies existing water quality objectives, developed for other waterbodies, based on those beneficial uses. Nowhere is there an evaluation of whether those water quality objectives are reasonable as applied to these newly designated waterbodies. The adoption of the Information Sheet would violate the Administrative Procedure Act and the Water Code by rulemaking without following proper procedures or going through a proper analysis of the important factors identified in Water Code section 13241.

Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

cc: Robert Nees

Debra Liebersbach



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PETER W. McGaw process@archemorris.com

August 23, 2005

BY FACSIMILE AND MAIL

Ms. Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Re: Draft Resolution to Amend the Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region (Resolution No. R5-2003-0105)

Dear Ms. Cohen:

This letter is submitted on behalf of the Turlock Irrigation District (TID) for the purpose of commenting on the proposed Draft Resolution to Amend the Conditional Waivers of Waste Discharge Requirements for Discharges from Irrigated Lands Within the Central Valley Region, scheduled for hearing before the Regional Board on September 15 and 16, 2005. In particular, TID would like to comment on several issues raised by the proposed "Attachment A2," as follows:

1. The Regional Board should consider the full implications of the decisions embodied in Attachment A2 on other regulatory programs

Attachment A2 states, "[it] is intended solely as clarification of the Conditional Waivers and does not have any other regulatory effect." (Attachment A2, Page 1). TID questions how this statement fits with the need for consistency in regulatory activities. Indeed, TID wonders whether the Regional Board has the authority to limit the determinations embodied in Attachment A2 (many of which are commented on below) to a specific regulatory program without considering the foreseeable impact on other programs. Many of the decisions embodied in Attachment A2 reflect determinations of the jurisdictional and regulatory status of particular waterbodies. How can the Regional Board disregard the precedent established by Attachment A2? On the other hand, if the Board acknowledges it will need to be consistent with Attachment A2 in future regulatory activities (e.g., the regulation of discharges into agricultural waterways for which beneficial uses have never before been established), how does it justify not considering the impacts on those other foreseeable regulatory activities? TID believes the Regional Board

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must consider the *full* ramifications of the decisions reflected in Attachment A2 without limiting it to the Conditional Waiver program.

2. The wording of the proposed Attachment A2 is ambiguous in its use of the term "constructed agricultural drain."

Many of the facilities operated by TID and other irrigation districts are better characterized as "canals" rather than "drains." Although these canal facilities may carry some incidental agricultural runoff, the canals are constructed facilities whose principal purpose is to convey water for irrigation. In some cases, canals may follow pre-existing natural channels, in other cases they may intercept natural channels but then convey water in a different direction (and downstream channels may have been filled long ago), and in some cases they may convey water along a route where no water flowed historically. The flow in canals is largely managed to supply irrigation water to fields. Thus, the flow can be intermittent and, from time to time might be cut off completely (e.g., when performing maintenance). By categorizing all waterbodies as either "constructed agricultural drains" or "streams" (i.e., natural waterways or channelized natural waterways), the proposed Attachment A2 is unclear as to the status of constructed canals and other constructed waterbodies that are not "constructed agricultural drains."

Moreover, the supply water flowing in the canals is not a "waste discharged from irrigated lands." To the extent the canals receive incidental agricultural runoff, they are simply the recipients of discharges of waste by others. (Similarly, agricultural drains simply receive discharge from others, often combined with percolating groundwater and unused irrigation water ("operational spills"), both of which are *not* waste.) Mere operation of canals – or drains – does not require the preparation of a Report of Waste Discharge (Water Code section 13260(a)) and therefore should not require either Waste Discharge Requirements or participation in the Conditional Waiver program.

Nonetheless, the Regional Board staff have clearly indicated their intent to include both canals and drains in the Conditional Waiver program. If this is indeed the Regional Board's intent, that intent should be clearly stated, perhaps by changing the term "constructed agricultural drains" to "constructed agricultural waterways." The definition of this latter term would be "a

A "drain" is generally used to remove excess water, as distinguished from a "canal" or other water supply conveyance. (Compare, "Canal — A constructed open channel for transporting water from the source of supply to the point of distribution" (Water Words Dictionary, Nevada Division of Water Resources Department of Conservation and Natural Resources (http://water.nv.gov/Water%20planning/dict-1/wwords-c.pdf)) to "Drain — (1) To draw off (a liquid) by a gradual process. (2) A buried pipe or other conduit (closed drain) for the conveyance of surplus groundwater. (3) A ditch or canal (open drain) for carrying off surplus surface water or groundwater. (4) A system to control water tables near the ground surface to maintain levels at or below specified depths." Water Words Dictionary, Nevada Division of Water Resources Department of Conservation and Natural Resources (http://water.nv.gov/Water%20planning/dict-1/wwords-d.pdf))

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constructed surface waterbody with the primary purpose of conveying irrigation water or drainage water to or from agricultural operations."²

3. The Board should not use a "clarification" to expand the term "stream" beyond the customary usage.

The term "stream," as used in the "tributary statement," is not defined in the Basin Plan. Instead, proposed Attachment A2 would define the term "stream" to include essentially all areas where water may have collected — even intermittently — at any time in the past. How far back in time does one look? In prehistoric times, the entire Central Valley was a large lake, which drained over thousands of years. That topography of the Central Valley has been modified over the past 100+ years by actions designed to make the land suitable for farming and other activities. The vast majority of these actions have been approved, and indeed encouraged, by the state and federal governments. At which point in time does the Regional Board believe a waterway must have been in a "natural" state to be deemed a "channelized stream?" If the Regional Board is going to assert that a particular waterway is, in essence, a "natural" stream that has simply been "channelized," it needs to be clear as to when this natural waterway must have existed prior to channelization.

Moreover, the term "stream" implies a regular presence of water and a flow of that water from one location to another in a well-defined channel. TID knows of no evidence that the Regional Board considered the presently proposed definition of "stream" when it used that term

TID has intentionally not incorporated the phrase presently in Attachment A2, "constructed in a location where no natural water body existed prior to the construction activity," in its suggested definition. As explained in the next comment, TID believes this phrase improperly excludes from the definition of "constructed agricultural drain (or waterway)" facilities that have existed for decades and have never been considered the equivalent of "natural streams" for regulatory purposes or in any common usage.

TID uses the term "tributary statement," rather than "tributary rule," because it believes that the Basin Plan clearly states that the application of downstream beneficial uses to upstream tributary waterbodies is simply a generalized "starting point" for a beneficial use analysis, not a "rule." TID believes the Regional Board's current interpretation of the tributary statement, requiring a separate Use Attainability Analysis and Basin Plan Amendment to "de-designate" beneficial uses in undesignated upstream tributaries, turns much of the full tributary statement language into surplusage. TID is aware that this issue is currently in litigation (*Vacaville and California Association of Sanitation Agencies v. State Water Resources Control Board*). So as to not unduly duplicate Board records, TID requests the Board take administrative notice of its records pertaining to the *Vacaville* litigation and TID incorporates here those portions of the *Vacaville* record pertaining to this issue. TID does note that the Regional Board's current interpretation is diametrically opposed to its interpretation at the time it adopted the particular language of the tributary statement. See letter dated 31 August 2000 from Jerrold A. Bruns, Central Valley RWQCB, to Kathy Goforth, USEPA, attached. TID believes a formal section 13241 analysis must be performed before beneficial uses may designated and water quality objectives established for any stream or waterbody that is not formally designated in the Basin Plan.

in the tributary statement in the Basin Plan. TID urges the Regional Board to acknowledge a more widely recognized definition of "stream," such as that found in the USGS Water Science Glossary of Terms: "stream — a general term for a body of flowing water; natural water course containing water at least part of the year. In hydrology, it is generally applied to the water flowing in a natural channel as distinct from a canal."

By defining the term "stream" for the first time, and particularly by adopting a definition that is significantly different from the definition generally recognized, the Regional Board is adopting a rule of general application that carries with it consequences for other regulatory actions that have not been considered. This action is clearly a rulemaking that requires compliance with both the Water Code and the Administrative Procedure Act.

The term "stream," as used in the "tributary statement," should be limited to those watercourses that remain in their natural state today. Other waterbodies, including those that have been entirely constructed and those that approximate the location of pre-existing waterways but which have been substantially modified so that they no longer exhibit the characteristics of natural waterways, should be dealt with separately from a regulatory standpoint.⁵

4. Attachment A2 would establish beneficial uses for previously undesignated waterbodies without a proper analysis.

Attachment A2 acknowledges that, at the very least, waterways that are not natural streams or "channelized" natural streams are not included within the Regional Board's interpretation of the "tributary statement." (Attachment A2, page 3). Although Attachment A2 suggests there may be other ways in which beneficial uses may have been designated for some of these "constructed" waterways, it does not address constructed waterways that do not fit within any of these alternative "designation" processes. Thus, the "clarification" fails to address the ambiguity of the original Conditional Waiver identified by the Sacramento County Superior Court.

In addition, beneficial uses cannot be "designated" by the processes described in items (3) through (5) on page 3 of Attachment A2. TID's concern regarding "method (3)" (the tributary statement) has been discussed above in footnote 2. With respect to "method (4)," (designation by operation of law), the federal Clean Water Act does not designate beneficial uses. The "fishable/swimmable" goals under the Clean Water Act are not "designated beneficial"

http://ga.water.usgs.gov/edu/dictionary.html#S

In some urban areas, for example, natural creeks have been entirely encased in culverts for miles and are completely covered by roads, houses and businesses. In other areas, channels have been "hardened" with riprap or concrete for flood control purposes. Much of this activity has occurred with the full blessing of regulatory agencies. To attribute the characteristics of a "natural" stream to a culvert or other heavily-modified waterway without a full understanding of the condition of the particular waterway and the steps that would be necessary to support certain beneficial uses fails to comply with the legislative mandate of section 13241.

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uses"—they are merely goals. The Clean Water Act states "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved" (33 U.S.C. § 1251(a)(2) (emphasis added). Rather than purporting to establish these goals as "beneficial uses," the Clean Water Act instead delegates to the states the role of designating beneficial uses and developing water quality criteria. (33 U.S.C. § 1313.) The Clean Water Act does not, by "operation of law" or otherwise, designate beneficial uses for any water bodies.

With regard to "method (5)" (preexisting beneficial uses), 6 the Antidegradation Policy clearly did not "designate" beneficial uses for particular waterbodies. Designation of beneficial uses is a hydrographic-unit specific determination, which clearly was not done during the process of adopting the Antidegradation Policy. Moreover, reliance on the Antidegradation Policy to establish beneficial uses under the Conditional Waiver does not allow the regulated community to know which beneficial uses and water quality objectives the Regional Board considers to be applicable to a particular waterbody. The California Administrative Procedure Act requires that every regulation conform to the standards of necessity, authority, clarity, consistency, reference, and nonduplication set forth in subdivision (a) of Government Code Section 11349.1. Government Code Section 11349(c) defines "clarity" as, "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." Reliance on "method (5)" to designate beneficial uses and apply water quality objective to particular waterbodies lacks clarity, in violation of the Administrative Procedures Act.

Water Code section 13241 specifically requires a formal determination of the "past, present, and probable future beneficial uses" when establishing water quality objectives applicable to a particular waterbody. Section 13241(a). To the extent that Attachment A2 purports to establish beneficial uses for waterbodies not previously designated by a formal, basin-planning process (i.e., methods (1) and (2)), it circumvents the water-body-specific analysis required by section 13241.

5. Attachment A2 would improperly extend existing water quality objectives to waterbodies for which they were never intended and for which they have never been properly adopted.

Section 13000 requires that all water quality regulation be reasonable. Section 13241 puts teeth in this general legislative statement by setting out specific requirements that must be followed when establishing water quality objectives applicable to particular waterbodies. As

[&]quot;Method (5)" states, "beneficial uses that actually exist in a water body, or have existed since at least 1975, must generally be protected even if they are not formally designated in a [plan or policy.]" (Attachment A2, Page 3, Item (5)).

One of the factors that must be considered when establishing Water Quality Objectives is the "Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto." Section 13241(b).

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noted above, the establishment of water quality objectives is specific to the particular hydrographic unit in question. Having never formally "designated" the waterways in question here, the Basin Plan did not, and could not, have established water quality objectives for those waterways. Indeed, as the Superior Court recognized:

"Factors to be considered in establishing WQOs must include the 'past, present, and probable future beneficial uses of water." Without the benefit of beneficial use assessments, it is unclear whether the Board has established WQOs -- or how it properly could have established WQOs -- for many of the agricultural channels that receive discharges from irrigated lands."

(DeltaKeeper/California Farm Bureau v. SWRCB, Trial Court Decision, Page 26, emphasis added).⁸

There has never been a formal determination, following a full consideration of the section 13241 factors, that applying the water quality objectives identified in the Conditional Waiver to previously-undesignated waterways. Without such a determination, application of these water quality objectives to agricultural waterbodies is improper. The rote application of "generic" water quality objectives to these waterbodies is unreasonable, and bypasses the analysis required by 13241.

In conclusion, Attachment A2 is much more than just a "clarification." Attachment A2 purports to designate beneficial uses for waterways for which beneficial uses have never before been designated, and then applies existing water quality objectives, developed for other waterbodies, based on those beneficial uses. Nowhere is there an evaluation of whether those water quality objectives are reasonable as applied to these newly designated waterbodies. The adoption of Attachment A2 would violate the Administrative Procedure Act and the Water Code by rulemaking without following proper procedures or going through a proper analysis of the important factors identified in Water Code section 13241.

Similarly, the "tributary statement" could not have designated beneficial uses for agricultural waterways that may be tributary to federal waterbodies, since this theory of federal jurisdiction was never articulated by the Regional Board until the *Talent Irrigation District* decision was published. Certainly, the Regional Board's administrative record for the Basin Plan adoption does not reflect any such consideration. There was not, and could not have been, a proper section 13241 analysis of applying downstream beneficial uses to upstream agricultural waterbodies at the time the tributary statement was incorporated into the Basin Plan.

Indeed, if the Regional Board finds some of the Basin Plan's water quality objectives do apply to certain waterbodies even though there was never any section 13241 analysis for those particular waterbodies, the validity of the water quality objectives themselves is put in doubt.

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Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me.

Very truly yours,

ARCHER NORRIS

Peter W. McGaw

Attachment: Letter from Jerrold A. Bruns, CVRWQCB, to Kathy Goforth, USEPA, dated 31 August 2000



California Regional Water Quality Control Board

Central Valley Region

Steven T. Buller, Chair

Gray Davis

Garanan

Winston II. Hickox Secretary for Environmental Protection

Sucremento Main Office Internet Address: http://www.twrch.cs.gov/-rvach5 3443 Rootics Road, Sulfe A, Sacremento, California, 95927-3003 Phone (916) 255-3000 - FAX (916) 255-3015

31 August 2000

Kathy Goforth
US Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 95812-0100

RESPONSE TO US EPA ACTIONS ON BASIN PLAN AMENDMENTS

We have reviewed the letter from US EPA to State Water Resources Control Board that takes action on Basin Plan amendments that were adopted by the Regional Board in 1989, 1990, 1994 and 1995. We may submit additional comments next week to further clarify some of our points. We are concerned that US EPA has taken so long to not on these amendments, especially since US EPA proposes to disapprove some elements even though no significant adverse comments were received from US EPA during the adoption process. Following are responses to US EPA determinations.

Attachment A. Disapproved Provisions

1. Tributary Footnote

US EPA suggests that the footnote on Table II-1, adopted in 1975, actually designates beneficial uses for water bodies tributary to those listed on Table II-1. US EPA, therefore, proposes to disapprove the language added in 1994 to the Basin Plan because they view this as a change from what was slated in 1975.

We do not agree with the analysis and assumptions that are included in US EPA's proposed disapproval of the amendment. The footnote was included on Table II-1 to help the regulated community understand that, in the absence of information to the contrary, the Regional Board would assume that streams had the same beneficial uses as the named water bodies to which they are tributary. Dischargers or other interested parties had the opportunity to conduct studies and present information demonstrating what beneficial uses were appropriate. The Basin Plan could then be amended to reflect the beneficial uses that were appropriate for the water body in question. In a March 1978 letter from US EPA to State Board this issue is discussed and it is clear that the state position is that the Regional Board did not intend to apply the "general rule" to designate beneficial uses to all waters tributary to the listed waters. At the time US EPA did not agree with this interpretation, but the Regional Board did not make any agreements with US EPA, that contradicted this position.

The tributary footnote was not meant to designate beneficial uses and it was not meant to be applied rigidly in a manner that ignored available information. There are so many obvious examples where tributaries do not have the same beneficial uses as the downstream named receiving water, that it is

California Environmental Protection Agency

Response to US EPA Basin Plan Actions

-2-

31 August 2000

inconceivable that the Regional Board, in adopting the footnote, intended it to be used in the manner US EPA suggests is appropriate. Following are a few examples of obvious cases where the footnote language just does not make sense if it is applied as US EPA suggests:

- The Sacramento River and Delta have navigation as a beneficial use. Navigation is defined as uses of water for shipping, travel, or other transportation by private, military, or commercial vessels. Virtually none of the tributaries could possibly have this beneficial use, but according to US EPA it is designated.
- The San Joaquin River has migration and spawning for cold water species as beneficial uses.
 Agricultural drains, such as Orestimba Creek, Del Puerto Creek, Ingram-Hospital Creek, and others could not possibly have these beneficial uses.

When the tributary footnote was included in the Basin Plan in 1975, the Regional Board knew that the beneficial uses that were listed for the named water bodies were not always appropriate for the tributaries. It was assumed that when information became available, it would be used to determine actual beneficial uses.

The language added in 1994 to the Basin Plan was meant to clarify how the Regional Board identifies which beneficial uses are appropriate in the tributaries. This language clarified the method that had been implemented since adoption of the Basin Plan in 1975. Therefore, it is unclear what affect US EPA disapproval of the 1994 language will have on the way the Regional Board determines beneficial uses. The Regional Board still intends to make site specific determinations and amend the Basin Plan to include them. Disapproval will remove the clarification and potentially be a disservice to readers of the Basin Plan.

2. Dissolved Oxygen

In the editing that was done as part of the 1994 Basin Plan amendment, some of the dissolved oxygen provisions were misplaced. No changes in the objectives were intended and during the next printing of the Basin Plan the wording will be restored to the way it was prior to the 1994 editing.

3. Federal Antidegradation

In the 1989 amendments to the Basin Plan, the Regional Board added a section to explain the federal antdegradation policy. Staff was intending to present a factual account of the policy for public information. No special interpretations or manipulations were intended. US EPA does not agree with the way staff explained the policy. Unfortunately, US EPA did not tell us this 10 years ago when it was adopted, so 10 years of bad information has been provided to the public. We will consider US EPA recommendations for appropriate wording during the next triennial review.

Attachment B Understandings

The understandings are acceptable with the exception of the following:

5. US EPA states that it is their understanding that the MUN beneficial use is designated for all water bodies in the Region. This would include the water bodies listed in Table II-1 that currently do not have the MUN beneficial use designated and all the unnamed tributaries.

We do not agree with this understanding. The Sources of Drinking Water Policy specified that all waters of the state should be considered suitable or potentially suitable for MUN with certain exceptions. One of these exceptions allowed the Regional Board discretion on whether or not to add the MUN designation for water hodies that already had designated uses that did not include MUN. In 1975, the Regional Board specifically designated beneficial uses for the water bodies listed in Table II-1. Some of the water bodies listed in Table II-1 were specifically not designated for the MUN beneficial use. The adoption of the Sources of Drinking Water Policy did not change these designations. However, we agree with US EPA that most of the water bodies listed in Table II-1 should be designated as MUN. We will commit to updating our MUN designations for water bodies listed in Table II-1 during the next Triennial Review.

We agree that the Sources of Drinking Water Policy would apply, in general, to the unnamed tributaries because these have never formally had beneficial uses designated for them. The Regional Board will implement the Sources of Drinking Water Policy when developing permits and determining permit limits for discharges to the unnamed tributaries. We do not agree that this policy designates beneficial uses as defined in the Clean Water Act.

6. We are not sure what US EPA's position is when agencies, acting under their respective state regulations, apply pesticides or herbicides for vector and weed control, pest eradication, or fishery management. The Regional Board does not intend to adopt basin plan amendments every time any of these proposed activities are proposed or implemented. The intent of the variance described in the Basin Plan for these types of applications is to allow quick implementation of emergency projects to control undesirable and dangerous species. Often these projects involve short-term toxicity within affected waters. Because of the urgent nature of these projects, the Regional Board has not prescribed waste discharge requirements nor re-evaluated the water quality objectives of the affected waters. The term, "variance", as used in our Basin Plan, was not intended to have the same meaning as the term does in the Clean Water Act (that relates to variances of water quality standards).

Attachment C Issues That Should Be Addressed in the Next Triennial Review

US EPA has identified 13 issues that they believe should be addressed in the next Triennial Review. The Regional Board will consider US EPA recommendations along with suggestions and recommendations from other stakeholders. Many of the issues that are identified would take significant staff resources to address. During the last Triennial Review, more than 70 issues were identified. The Regional Board has less than 1 py for basin planning work. Without budget augmentations, most of US EPA's issues will likely not be addressed. Following are comments on a few of US EPA's issues:

- 5. Appropriate portions of TMDLs will be incorporated into Basin Plans according to time schedules included in federal and state workplans.
- 8. Sinff will propose language to be included in the Basin Plan to reflect "the Alaska Rule" when a new addition is published.

If you have comments or questions regarding our responses, please call me at (916) 255-3093.

JERROLD A. BRUNS

Secremento River Watershed Section



August 17, 2005

VIA FACSIMILE – ORIGINAL TO FOLLOW

Ms. Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms. Cohen:

Re: Preliminary Draft Monitoring and Reporting Program for Water Districts Enrolled as Individual Dischargers under Resolution No. R5-2003-0105 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands

The Turlock Irrigation District (TID) appreciates receiving a preliminary draft of the proposed Monitoring and Reporting Program (MRP) requirements for Water Districts Enrolled as Individual Dischargers under Resolution No. R5-2003-0105 Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands on August 10th. Given the short timeframe available to review the document, we are unable to provide comprehensive comments. However, we would like to provide the following preliminary comments on the draft document and trust you will incorporate these changes into the next draft to be distributed to the larger public to review and comment. The District will provide additional comments on the public review draft, when it becomes available.

As an initial matter, TID continues to take issue with the fundamental premise underlying the proposed MRP for Water Districts. "Water Districts" (including TID and other irrigation districts) are generally not "dischargers of waste" into waters of the state – they are recipients of waste discharged by others into waters of the state that is simply being conveyed by TID and other districts. Although Water Code section 13267(a) allows the Regional Board to investigate the quality of any waters of the state, subsection (b), which grants the Regional Board authority

This distinction between a mere conveyance of water and the source of a pollutant was recognized in the Bay Area Regional Board's issuance of the "Tosco" permit, which was upheld by both the State Board and the California Courts of Appeal (see, e.g., Communities for a Better Environment v. State Water Resources Control Board (Tesoro Refining and Marketing Company, Real Party in Interest), (2003) 109 Cal. App. 4th 1089, 1099 ("The Regional Board also noted that a Refinery investigation had shown that the refinery was not the primary source of dioxins in Suisun Bay. Rather, the dioxins entered the water by 'atmospheric deposition,' from sources such as motor vehicle exhaust and wood burning. The Refinery's wastewater thus became a 'conveyance[] of dioxins ... from other sources.'"))



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to require *others* to conduct its investigation for it, specifically applies only to "dischargers." Those discharging *into* the canal systems are the ones responsible for those discharges, not the irrigation districts.

It is noteworthy that those other dischargers are already regulated by the Regional Board, either under the Conditional Waiver program or under some other program. For example, in TID's geographic area, the East San Joaquin Water Quality Coalition (Coalition) has been formed to represent those growers or their lands for the purposes of the Conditional Waiver. The East San Joaquin Water Quality Coalition and its members, not TID, are responsible for monitoring and controlling the water quality of those members' discharges into the waters of the state being conveyed by TID's canal system. Similarly, discharges of urban stormwater and nuisance water into the waters of the state conveyed in TID's canal system are also regulated by the Regional Board through separate programs. Again, those urban dischargers, not TID, are responsible for monitoring and controlling their own discharges into waters of the state. While TID is coordinating with the Coalition and urban dischargers, and providing support as needed, it is ultimately the responsibility of the Coalition's members and the urban water dischargers to monitor and control discharges from their respective lands into waters of the state.

It has been suggested that TID and other irrigation districts somehow have the ability to "control" the discharges of others into waters of the state in their canal systems through the use of contractual arrangements. While TID does have agreements with some growers and urban water users that allow for discharges into TID's canal system, these agreements were developed primarily to ensure those discharges do not cause safety hazards or damage to the canal facilities, and are timed such that they do not adversely impact TID's operation and maintenance of the canal system. They do not, and were never intended to, shift responsibility for regulatory control of water quality impacts of those discharges to TID. Indeed, as noted above, these discharges are already the subject of regulation and control by the Regional Board, either under the Conditional Waiver or under other programs.

In short, the Water Code places responsibility for discharges into waters of the state on the discharger, not the recipient of that discharge. Imposing responsibility on TID and the other irrigation districts for discharges by others into their water distribution systems is double-regulation of the same discharges and would impose responsibility and costs on parties (i.e., TID and its customers) who are not legally responsible for those discharges. TID urges the Regional Board staff to reexamine the fundamental assumptions of the proposed MRP and revise it to focus exclusively on determining the impact, if any, of any discharges to waters of the state by the Water Districts themselves.

For example, to the extent TID's own activities result in discharges to water so the state (i.e., for the purposes of aquatic weed control), TID takes full responsibility for those discharges and monitors them appropriately under the General Permit issued by the State Water Resources Control Board.

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In addition to TID's general concerns regarding the foundation for the proposed MRP, it has many specific concerns, as follows:

The District tracks the pesticides it uses, as well as the best management practices implemented to ensure its use does not impact water quality. Should monitoring identify a water quality issue due to TID's pesticide applications, TID will evaluate and make adjustments to its practices. However, the TID should not be responsible for tracking the pesticides used by all others, much less the cropping patterns and management practices of others. As stated above, these measures can and should be implemented through other regulatory mechanisms.

The monitoring requirements identified will be exceedingly costly to implement. Has there been any evaluation of the actual cost of implementing the new MRP, including the cost of collecting and analyzing historical water quality data, plan development, sampling, analysis, monitoring of pesticide use, cropping and management practices by others, performing Phase I and Phase II Toxicity Identification Evaluations (TIEs), and reporting?

It is unclear why some of the parameters were included in the minimum monitoring requirements. In addition, it appears as though the PQLs are based on values from academic research laboratories and not values capable of being met by commercial laboratories. It would be helpful if the Regional Board would provide the basis for each parameter included; how the methods and PQLs were determined; and what commercial laboratories can provide the requested analyses to the Regional Board's specifications. It should be recognized, that under the new monitoring requirements, the number of samples submitted to labs by water districts and coalitions throughout the valley will be significant. Before establishing the minimum monitoring requirements, the RWQCB should ensure an adequate number of laboratories are equipped to conduct the prescribed monitoring at a reasonable cost.

TID should not be responsible for monitoring for all of the constituents identified in the proposed list. TID does not use the majority of those chemicals, and the use by others should be monitored through other regulatory mechanisms. The inclusion of all of the chemicals, plus toxicity runs contrary to the Regional Board staff's verbal comments at the April 19th meeting in Modesto (where staff indicated the districts would either have to monitor for toxicity, or monitor for constituents of concern, but not both). At the meeting, Regional Board staff also indicated that once a problem is identified, the districts would not be responsible for tracking the source upstream, so long as the problem was not due to the water district's practices.

The MRP does not allow for any time to prepare the required monitoring and reporting program plan (MRPP) including implementation plan, and quality assurance program plan (QAPP). The draft MRP states that the program must be implemented immediately upon adoption (see page 14). The July 2003 Waiver allowed 10 months for the development and submission of a MRPP. TID, along with the other four irrigation districts that have applied for coverage as individuals under the Conditional Waiver, have expended significant time and

Ms. Wendy Cohen August 17, 2005 Page 4 of 4

resources complying with the existing July 2003 requirements. The districts should be given adequate time to comply with the new MRP.

Thank you for this opportunity to comment of behalf of the Turlock Irrigation District. Should you have any questions regarding these comments, please do not hesitate to contact me at (209) 883-8428.

Sincerely,

Debra C. Liebersbach, P.E.

Water Planning Department Manager

cc: Robert Schneider, Chair, CVRWQCB
Thomas Pinkos, Executive Officer, CVRWQCB
William Croyle, CVRWQCB staff
Margie Lopez-Read, CVRWQCB staff

South San Joaquin Irrigation District
Oakdale Irrigation District
Modesto Irrigation District
Turlock Irrigation District
Merced Irrigation District

July 15, 2005

Mr. William Croyle Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Mr. Croyle:

Re: Draft Monitoring and Reporting Program Order No. R5-2003-0105 for Water Districts
Under Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated
Lands

The Merced Irrigation District, Modesto Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation and Turlock Irrigation District (collectively referred to as 'Districts') each submitted a Notice of Intent (NOI) to comply with Resolution No. R5-2003-0105, Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands for Individual Dischargers (Waiver). Each District received a Notice of Applicability from the Regional Board. While the Districts' Monitoring and Reporting Plans (MRP(s)) have not been approved, each District completed the first year of monitoring, submitted the required annual reports, and has been verbally notified that they are currently in compliance with the Waiver requirements.

The primary function of irrigation districts is to convey irrigation water to its customers. Maintenance practices are necessary including the use of pesticides along irrigation conveyance facilities to control rodents and weed growth, for example, which can impact the ability to successfully deliver irrigation water to its customers. Under the individual waiver program, the Districts submitted MRPs designed to evaluate and monitor the practices used by the Districts and their potential impact to water quality, recognizing there are other influences that are regulated by other means, as described in the following paragraphs.

In response to the Waiver, coalitions were formed throughout the valley to represent growers in the new regulatory process. In this area, the East San Joaquin Water Quality Coalition and the San Joaquin County & Delta Water Quality Coalition were formed. The Waiver was set up to ensure that each grower was responsible for the quality of water leaving their land, and impacting waters of the state. Growers within the Districts, as well as areas outside the Districts' boundaries signed up for coverage and representation by these coalitions. As a result,

Croyle Letter July 15, 2005 Page 2 of 5

agricultural lands located within the irrigation boundaries of a District, but owned and operated by individual growers, are represented by coalitions in the Waiver process – not by the Districts. It is also important to note that there are agricultural flows coming into some District facilities from lands located outside District boundaries. Again, these lands are represented by a coalition. Individual growers are paying coalition dues for representation, and the monitoring necessary for waiver compliance.

Recognizing the Districts and the coalitions are utilizing many of the same waterways, the Districts are coordinating with the local coalitions in their efforts, and providing information and assistance as needed. When the Districts' current monitoring sites and parameters are combined with the monitoring conducted by the coalitions in these areas (see Figure 1, and Table 1) the amount of data being collected and analyzed in this region is significant, and will be extremely useful in characterizing water quality within the area. This coordination, combined with the additional monitoring provided by the Districts, has resulted in more information being gathered in this area, than any other area within the valley (see Table 2).

Even though the amount of data being acquired and analyzed within this area is significantly more than is being obtained in other areas of the valley, Regional Board staff continues to believe that irrigation districts do not fit well under the monitoring plan requirements developed for individual growers. As such, Regional Board staff has been developing a draft MRP specific to water districts. The initial draft water district MRP is essentially the same as required by the Coalitions, with one exception. The Coalition MRP allows for a phased approach to provide a cost effective monitoring effort. The Draft MRP for water districts does not allow a phased approach.

Coalitions are required to monitor approximately 20% of water bodies each year. Under the new Draft MRP for water districts, Coalitions would benefit because water districts would already be monitoring some of the water bodies, relieving the Coalitions of some obligations required by the Waiver. Landowners within the Districts' boundaries would actually be paying twice for coverage under the Waiver (through increased fees to the Districts), while landowners outside of the Districts boundaries would receive the same benefit of the additional monitoring by Districts without paying additional costs.

It is important to recognize that in addition to the Districts' activities and practices, there are other influences on local waterways. As indicated through the recent tours of the Districts, each irrigation district is slightly different. However, many of the same issues arise within each area. Urban inflows, for example, are associated with many of the canals. Currently, urban inflows into local canals and rivers are regulated by the Regional Board through another program, beyond the scope of the Waiver. There is little if any data available on the quality, quantity or timing of

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discharges from these sources, even though urban homeowners typically use many of the same substances used in the agricultural setting.

Recognizing the potential urban influences, Regional Board staff instructed agriculture, including the irrigation districts, to identify those facilities that have least urban influence as possible monitoring locations. With the ever-expanding urban landscape with the San Joaquin Valley, it will become increasingly difficult to identify waterways without an urban signature.

During recent tours of District facilities, Regional Board staff seemed to suggest the Districts should take responsibility for urban inflows into canal systems, and the potential urban impacts to water quality should be monitored under the "agricultural" Waiver process. Urban influences were specifically excluded from the scope of the Waiver. Regulating urban inputs into canal systems within the Districts' boundaries in this manner would not only be contrary to the Waiver program, but also result in the regulation of urban discharges into these specific canals in a different manner than a similar discharge into a stream, creek, canal, or other waterbody anywhere else in the state. As with the agricultural discharges into canal system, urban discharges are already regulated by the Regional Board through another program. Should monitoring be needed, the Regional Board should require urban entities to provide that data.

The ongoing question from the Regional Board Staff (Board) relates to how the Districts fit within the Waiver program. The Districts have the responsibility to provide irrigation water to about 450,000 acres of some of the most productive farmland in the world. There is also a responsibility to manage the maintenance of the irrigation water conveyance facilities in a manner that complies with the Waiver. The responsibility to comply with the Waiver regarding discharges from irrigated lands lies with the landowners in that they cannot discharge wastes as they are described in the Waiver. Whether the receiving water is a river, creek, drain or canal, it does not make sense that a landowner can transfer responsibility of whatever may be leaving his land to a District simply because he discharged to a District operated canal. The Coalitions are responsible for assuring that their membership complies with Waiver requirements, not the Districts. The Waiver requirements for Coalitions do not relieve them of monitoring any water body receiving discharges from a Coalition member. The new Draft MRP would transfer responsibility of individual landowner compliance from the individual landowners and the Coalitions to the Districts. An unjust burden of cost would be shifted from landowners outside of the Districts to landowners within the Districts.

Recognizing the various inflows into local waterways, the difficulty in differentiating sources and the other issues identified above, the Districts pursued and successfully obtained a Proposition 13 grant to develop a "Framework" to evaluate water quality within the region. The grant will provide significant funding within the next year and a half to evaluate water quality within the

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region, educate urban and agricultural interests, evaluate Best Management Practices that can be implemented to address water quality issues, etc.

The Framework monitoring plan is currently under development. Approximately forty-eight monitoring sites have been chosen within the Framework study area to (1) represent discharge that is affected by a variety of land use areas; (2) represent and capture the majority of the discharge leaving each irrigation district; (3) integrate the various monitoring projects currently under way within the Framework study; and (4) characterize inflows into each irrigation district. The standard list of parameters to be monitored include diazinon and chlorpyrifos, some water quality parameters already monitored under the Ag Waiver program that overlap with the DO TMDL program and pollutants of concern under the California Bay-Delta Authority Drinking Water Quality Program. A variety of pesticides that (1) are currently being monitored by a majority of the irrigation districts; (2) are currently being monitored by the Coalitions; or (3) are heavily used in the region based on DPR data will also be monitored. In addition, acute toxicity testing is planned at all sampling locations three times per year (once during the storm season and twice during the irrigation season).

A similar Proposition 50 grant was obtained by the Turlock Irrigation District to study the Harding Drain Watershed. These programs, when combined with the current Waiver compliance monitoring being conducted by both the coalitions and the Districts, will provide even more data on water quality and measures that can be taken to improve water quality.

When evaluating the amount of water quality data being obtained within the area, as compared to other areas of the state, the Districts believe the Regional Board's goal of "characterizing water quality" within this region is being more than met. It is our recommendation that the Regional Board staff work with the local coalitions and Districts in implementing the existing Waiverbased and grant-funded monitoring programs to implement the current version of the Waiver. These programs will provide much more data than any of the other approved programs within the valley. Given the significant amount of data being obtained within the region, with the existing programs and provisions, the significant Regional Board staff time, not to mention District time needed to generate a new MRP is not warranted at this time. In several years, when the Waiver is considered for revisions and/or re-approval, the Regional Board staff could then evaluate what additional or alternative provisions are needed, based on multiple years of data.

The Districts remain dedicated to working with the local coalitions and Regional Board to meet the requirements of the Waiver and characterize water quality. We hope the recent time spent in touring the Districts has provided Regional Board staff in a better understanding of irrigation in the area, and look forward to discussing this matter further. Croyle Letter July 15, 2005 Page 5 of 5

Your serious consideration of the above comments is greatly appreciated. Should you have any questions regarding the above information, please do not hesitate to contact any one of the irrigation districts.

Sincerely,

James Atherstone

SOUTH SAN JOAQUIN IRRIGATION

DISTRICT P.O. Box 747

Ripon, CA 95366

Kevin King\

OAKDALE IRRIGATION DISTRICT

1205 East F Street Oakdale, CA 95361

Michael Niemi

MODESTO IRRIGATION DISTRICT

P.O. Box 4060

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Debra & Liebersbach

TURLOCK IRRIGATION DISTRICT

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Turlock, CA 95381

Thomas Stephens

MERCED IRRIGATION DISTRICT

P.O. Box 2288

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Enclosures

cc:

Ms. Wendy Cohen, RWQCB

Ms. Margie Lopez-Read, RWQCB

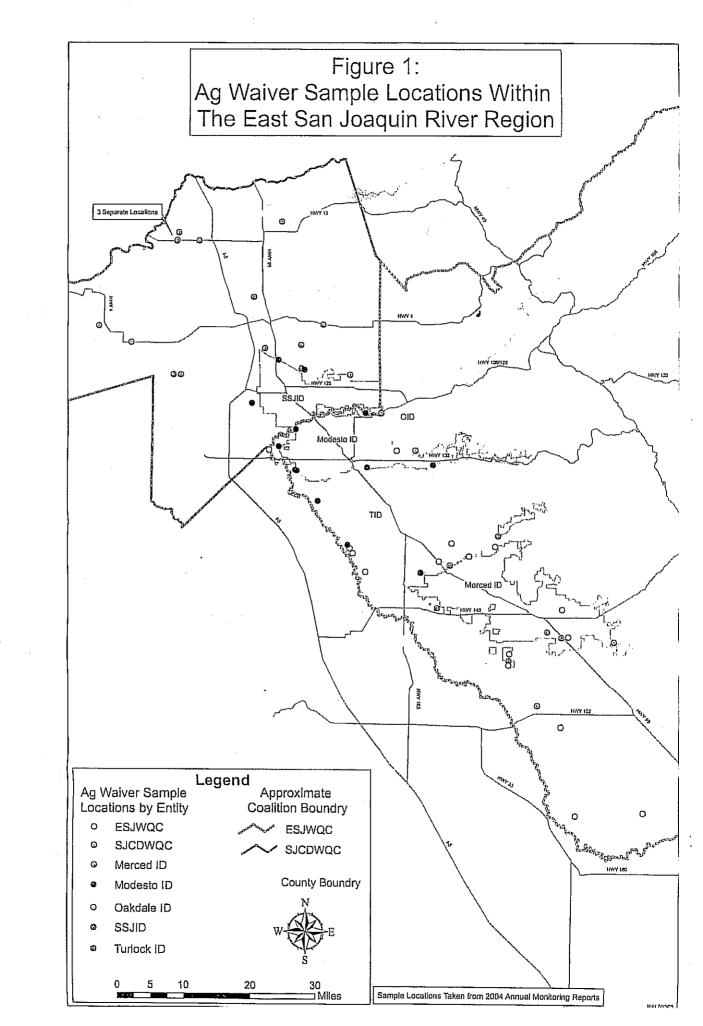


Table 1: Sample Locations and Acres Within the East San Joaquin Region

Ownership	Coverage Area (Acres)	Number of Sample Sites	Sample Site Description
East San Joaquin Water Quality Coalition	660,000	16	Ash Slough @ Ave 21
want wait amagain 11 time Quality Countries	220,000	1"	August Road Drain @ Crows Landing
			Dutchman's Creek (Deadman Creek) @ Gurr Road
			Riley Slough @ confluence of SJR
	<u> </u>		Bear Creek @ Kiby Rd
			Cottonwood Creek @ Road 20
			Dry Creek @ Wellsford Road
			Duck Slough (a) Gurr Road
			Duck Slough @ Pioneer Rond
			Highline Canal @ Hwy 99
			Highline Canal @ Lombardy Ave
			Hilmar Drain @Central Ave
			Jones Drain @ Oakdale Road
			Lone Willow Slough @ Madera Ave
			Merced River @ Santa Fe
			Prairie Flower Drain @ Crows Landing Road
San Joaquin County Delta Water Quality Coalition	1 558,575	14	Calaveras River @ Belotta Intake
			Duck Creek @ Highway 4
			Little Johns Creek @ Jack Tone Rd.
			Potato Slough @ Hwy 12
			French Camp Slough @ Airport Way
			Grant Line Canal @ Calpack Rd (Furguson)
			Grant Line Canal (ii) private rd (Arnando)
			Hwy 12 @ wast of Guard Rd (Ehlers)
			Kellog Creek @ Hwy 4
			Lone Tree Creek @ Jack Tone Road
			Marsh Creek @ Bulfour Rd.
			Mokelumne River @ Bruella Rd.
			Terminous Tract @ district drain off Hwy 12
			Terminous Tract @ field drain of Glasscock rd
	11/11 F011/00		
Merced Irrigation District	Within ESJWQC	8	North Side Canal Spill to Merced River
			Livingston Canal Spill to Merced River
		 	Livingston Drain
			Puglizevich Dam on Miles and Owens Creeks
			Casebeer Lateral Extension at Deadman Creek
			El Nido Dam on Mariposa Creek
			Fancher Lateral at Head
			El Nido Canal Spill to Chowchilla Slough
Modesto Irrigation District	Within ESJWQC	7	Waterford Lower Main Spill to Tuolumne River
			Lateral 1 Spill to Tuolumne River
			Lateral 5 Spill to Tuolumne River
			Jacobson Drain to Tuolumne River
			Main Drain Spill to Miller Lake
		•	Lateral 6 Spill to Stanislaus River
			Spenker Spill to Stanislaus River
Oakdale Irrigation District	Within ESJWQC & SJCDWQC	3	Coulter Pond
		 .	Langworth Pipeline
			Sweet Lateral
South San Joaquin Irrigation District	Within SJCDWQC	3	Drain 11 at Waltall Slough
	HILLI GICENTOC	۵	Drain 14 north of Lone Tree Rd
			Drain 12 at French Camp Rd.
			orani iz at Francii Camp Ru,
Tools I have blooded	Helt, Politica		L La V. P. W
Turlock Irrigation District	Within ESJWQC	3	Lower Lateral 2 ½ Spill
			Highline Spill
			Lateral 5 1/2 Drop 23 (Lower Spill)

Total Acreage In Region Total Sample Sites in Region 1,218,575 54

Table 2: Comparison of Acres Per Sample Site in the Various Regions of the Central Valley, California

Region	Acres	Number of Sample Sites	Acres Per Sample 22,566	
East San Joaquin Region Includes (SJCDWQC, ESJWQC, Merced ID, Modesto ID, OID, SSJID & TID) #	1,218,575	54		
Westside San Joaquin Coalition*	550,000	17	32,353	
Sacramento Valley Coalition*	2,145,000	16	134,063	
Rice Commision*	500,000	5	100,000	
South San Joaquin Valley Coalition*	4,400,000	10	440,000	

[#] Sources of information on the East San Joaquin Region were the 2004 AMRs submitted by the Irrigation Districts and the two Coalitions

^{*} Source of coalition acres and number of sample sites taken from Delta Keeper Power Point Presentation at June 2005 RWQCB meeting

June 21, 2005

VIA FACSIMILE - ORIGINAL TO FOLLOW

Ms. Wendy Cohen Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114

Dear Ms. Cohen:

Re: Staff Report on the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Valley Region, Prepared for the June 23, 2005 joint meeting of the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board

The Turlock Irrigation District received a copy of the Staff Report regarding the Irrigated Lands Conditional Waiver program (Staff Report), prepared for the June 23, 2005 joint meeting of the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board. The report describes the Regional Board staff's efforts toward regulating agricultural runoff through the program, as well as the progress made by the individuals and Coalition groups working to comply with the program.

We appreciate staff's recognition of the efforts by the irrigation districts to comply with the Conditional Waiver requirements. In particular, we note and appreciate the statement on page 22, "The Irrigation Districts [including the Turlock Irrigation District] have been thorough and responsive to the commitments that were made in individual MRPPs, and were timely in monitoring and report submittals." The Turlock Irrigation District would like to take this opportunity to reaffirm its commitment to compliance with the Conditional Waiver program.

However, the staff report perpetuates some confusion with regard to the area "represented by" the irrigation districts in general and the Turlock Irrigation District in particular (see, e.g., Staff Report, page 4 "These five [irrigation] districts... represent 456,000 acres of their service area."). As indicated in various submittals by the Turlock Irrigation District, as well as in discussions with Staff and comments before the Central Valley RWQCB, the Turlock Irrigation District does not "represent" all of the lands within its irrigation service area (approximately 150,000 acres) for the purposes of the Conditional Waiver program. The vast majority of the lands physically located within the District's boundaries are irrigated by individual growers, which are represented by the East San Joaquin Water Quality Coalition (Coalition) and comprise a portion of the 660,000 acres identified in the Staff Report as being represented by that Coalition (see Staff Report, page 15). Although the Turlock Irrigation District does not have access to individual growers' or Coalition records, these individual growers presumably have signed up and paid dues as required for coverage by the Coalition. The staff report acknowledges that the East San Joaquin Water Quality Coalition has collaborated with the Regional Board staff, (Staff Report, page 14), and the Coalition has apparently performed appropriate sampling and reporting and has generally conducted Toxicity Identification Evaluations when

Ms. Wendy Cohen June 21, 2005 Page 2

appropriate (See Staff Report, page 15).

Although the majority of irrigated lands within the District's boundaries are owned by individual growers, the District does own and operate approximately 250 miles of canals and laterals, as well as the right-of-ways associated with these facilities. The District has applied for coverage under the Conditional Waiver for those lands the District owns and operates and the District's activities that could potentially impact water quality within those facilities (e.g. maintenance within the canal right-of-way or water pumped into the canal by the District to supplement supplies).

All other inputs into the canal system are the responsibility of the individual or groups of individuals that discharge into the canals. For example, discharges from agricultural land into the canals are the responsibility of the individual grower or group of growers. These agricultural inflows are represented by the East San Joaquin Water Quality Coalition. Urban inflows (e.g. stormwater and nuisance water flows) into the canal system are also regulated by the Regional Board through a separate program.

The District continues to work with the Regional Board in complying with the Conditional Waiver requirements, even while awaiting approval of our Monitoring and Reporting Program Plan. In addition, the District is coordinating with the Coalition, and providing support as needed, in the Coalition's efforts to comply with Conditional Waiver requirements; however, since the District does not "represent" the irrigated lands covered by the East San Joaquin Water Quality Coalition, we ask that you please make the appropriate revisions to your staff report and to your presentation to reflect the actual area represented by the District under the Conditional Waiver program. Making these changes to your staff report and to your presentation will help avoid this confusion in the future.

Should you have any questions regarding this, please do not hesitate to contact me at (209) 883-8428.

Sincerely,

Debra C. Liebersbach, P.E. Water Planning Department Manager

cc: Arthur G. Baggett, Chair, and Members of the State Water Resources Control Board Robert Schneider, Chair, and Members of the Central Valley Regional Water Quality Control Board William Croyle, RWQCB staff Margie Lopez Read, RWQCB staff